INTERNATIONAL COURT OF JUSTICE

Yearbook
2011-2012

No. 66

I.C.J. - THE HAGUE - 2012

YEARBOOK

2011-2012

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In March 1947 the International Court of Justice instructed the Registrar to publish a *Yearbook* providing general information concerning its organization, jurisdiction, activities and administration.

The present volume — sixty-sixth of the series — covers the period from 1 August 2011 to 31 July 2012.

Seeking to strengthen complementarity between the *Yearbook* and the Court's other informational media, in particular its website and *Annual Report*, the Registrar ensures that the *Yearbook* is regularly updated and expanded, notably in order to enhance its instructional and explanatory role.

The *Yearbook* is produced by the Registry and in no way involves the responsibility of the Court; in particular, the summaries of judgments, advisory opinions and orders contained in Chapter V cannot be quoted against the actual texts of those judgments, advisory opinions and orders and do not constitute an interpretation of them.

Philippe COUVREUR,
Registrar of the Court.

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INTRODUCTION

The *International Court of Justice* (*ICJ*), which has its seat in The Hague (Netherlands), is the principal judicial organ of the United Nations. It was established by the Charter of the United Nations in June 1945 and began its activities in April 1946. Of the six principal organs of the United Nations, it is the only one not located in New York.

It had as its predecessor the *Permanent Court of International Justice* (*PCIJ*), which was instituted by the League of Nations in 1920 and was dissolved in 1946.

The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are English and French.

Also known as the "World Court", it is the only court of a universal character with general jurisdiction. The Court has a two-fold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system.

I. Basic Texts

The basic texts of the Court are the Charter of the United Nations and the Statute of the Court. Other texts are the Rules of Court and the Practice Directions supplementing them, as well as the resolution concerning the internal judicial practice of the Court.

These texts can be found on the Court's website, under the heading "Basic Documents". They are also published in the volume *I.C.J. Acts and Documents No. 6* (2007).

1. Charter of the United Nations

The International Court of Justice was brought into being by the Charter of the United Nations, signed in San Francisco on 26 June 1945. The Charter deals with the Court in Article 7, paragraph 1, Article 36, paragraph 3, and Articles 92-96, which form Chapter XIV.

2. *Statute of the Court*

(a) *Text of the Statute*

The text of the Statute was based upon that of the PCIJ. The modifications, a list which can be found in the *I.C.J. Yearbook 1946-1947* (pp. 101-102), were few in number, most of them being formal adaptations designed to take account of the replacement of the League of Nations by the United Nations.

The text of the Statute, which was also signed in San Francisco on 26 June 1945, is annexed to the Charter, of which it forms an integral part. According to Article 69 of the Statute, amendments to that instrument can be made using the same procedure as is provided for amendments to the Charter (see Articles 108 to 109). It may also be amended in accordance with proposals made by the Court itself (see Article 70 of the Statute).

No amendments have so far been made to the Statute.

(b) *States parties to the Statute*

The question of the status as a party to the Statute of the Court is governed by Article 93 of the Charter. To date 193 States are parties to the Statute (these are listed in Chapter III, pp. 105-110 of this *Yearbook*).

3. *Rules of Court and Practice Directions*

(a) *Rules of Court*

Article 30 of the Statute provides that "the Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure."

The first Rules of Court were adopted on 6 May 1946, and were published in the volume *I.C.J. Acts and Documents No. 1* (second edition, pp. 54-83). They were based on the latest text of the Rules of the Permanent Court, that of 11 March 1936, with certain changes, formal and substantive, a list of which was given in *I.C.J. Yearbook 1946-1947* (pp. 102-103).

Although the Rules remained unchanged from 1946 to 1972, a revision was undertaken by the Court in 1967. On 10 May 1972, the Court adopted some amendments of immediate interest, involving, in particular, the partial renumbering of certain articles (a table of concordance was published in *I.C.J. Yearbook 1971-1972*, pp. 3-11). The amended and partly renumbered Rules came into force on 1 September 1972 (published in the volume *I.C.J. Acts and Documents No. 3*, pp. 93-149).

The work of revision was subsequently resumed, and culminated on 14 April 1978 in the adoption of a new set of Rules, which came into force on 1 July 1978. They were first published in *I.C.J. Acts and*

Documents No. 4 concurrently with the *I.C.J. Background Note V*, entitled *Note by the Registry on the Revised Rules of Court (1978)*, indicating those articles modified and containing a table of concordance comparing the new Rules to those of 1972 (published in the *I.C.J. Acts and Documents No. 3* (1972)). For additional background information, the reader is referred to pages 111-119 of the *I.C.J. Yearbook 1977-1978*, which contains an analytical table comparing the structure of the new set of Rules to those of the 1946 and 1972 sets, and a table of concordance between the specific articles of the 1946, 1972 and 1978 Rules of Court.

It was not until 2000 that the Court amended the Rules of Court again. On that occasion, two articles were amended, namely Article 79, relating to preliminary objections, and Article 80, relating to counter-claims[1].

In 2005, the Court again amended the Rules, first Article 52 and subsequently Article 43. That same year, the Court adopted a new procedure for the promulgation of modifications to its Rules (see *I.C.J. Acts and Documents No. 6*, p. 91).

The text of the Rules of Court, as amended to date, can be found on the Court's website under the heading "Basic Documents". It is also published in the volume *I.C.J. Acts and Documents No. 6*, pp. 91-159.

(b) *Practice Directions*

As part of the ongoing review of its procedures and working methods, in October 2001 the Court decided to adopt Practice Directions for use by the States appearing before it. In so doing, it wished to more effectively deal with the congested state of its List and the budgetary constraints facing it. These Practice Directions involve no alteration to the Rules of Court, but are additional thereto.

The original text was made up of six Directions (numbered I to VI). It was supplemented in 2002 by the adoption of Practice Directions VII and VIII in February of that year and by Direction IX in April.

In July 2004, wishing to further enhance its productivity, the Court adopted Directions X, XI and XII. It also modified Direction V.

Two years later, in 2006, two new Directions were adopted (numbered IX*bis* and IX*ter*) and two others were amended (IX and XI).

Lastly, the Court adopted Practice Direction XIII in January 2009, when it modified Practice Directions III and VI.

These changes to the text of the Practice Directions are set out in detail in the *Yearbooks* corresponding to the date of their adoption. The full text of the Practice Directions currently in force can be found in Chapter IV of this *Yearbook*, p. 149 and on the Court's website under the heading "Basic Documents" (with a note of any temporal reservations).

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[1] They came into force on 1 February 2001. The Rules of Court as adopted in 1978 have continued to apply to all cases submitted to the Court prior to 1 February 2001, and all phases of those cases.

4. Resolution concerning the Internal Judicial Practice of the Court

In accordance with Article 19 of the Rules of Court, "[t]he internal judicial practice of the Court shall . . . be governed by any resolutions on the subject adopted by the Court". The resolution currently in force was adopted on 12 April 1976. It can be found on the Court's website under the heading: "Basic Documents/Other Texts". It can also be found in the volume *I.C.J. Acts and Documents No. 6*, pp. 175-183.

It should nevertheless be noted that the Court remains entirely free to depart from the present resolution, or any part of it, in a given case, if it considers that the circumstances justify that course.

II. PROCEEDINGS BROUGHT BEFORE THE COURT

The first case entered in the General List of the Court (*Corfu Channel (United Kingdom* v. *Albania)*) was submitted on 22 May 1947. Between then and 31 July 2012, the Court has had to deal with a total of 152 cases, i.e., 125 contentious cases and 27 advisory procedures (the full list of all the proceedings is annexed to this *Yearbook*, Annex 1, p. 260). In total, the Court has rendered 111 Judgments and 27 Advisory Opinions.

1. New Applications

During the period under review in this *Yearbook*, the Court received one new Application: on 22 December 2011, Nicaragua instituted proceedings against Costa Rica with regard to "violations of Nicaraguan sovereignty and major environmental damages on its territory".

2. Public Hearings

Between 1 August 2011 and 31 July 2012, the Court held public hearings in three cases: in September 2011, in the case concerning *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening)*; in March 2012, in the case concerning *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal)*; and in late April and early May 2012, in the case concerning *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*.

3. Decisions

During the period under review, the Court delivered four Judgments, three on the merits (in the case concerning *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia* v. *Greece)*, the case concerning *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening)* and the case concerning *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal)*) and one on the subject of compensation (in the case concerning *Ahmadou*

Sadio Diallo (*Republic of Guinea* v. *Democratic Republic of the Congo*)). It also gave an Advisory Opinion concerning *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development*.

Four Orders were also made regarding the conduct of proceedings.

*

Proceedings pending before the Court during the period under review:

Title	*Dates*
(*a*) Contentious	
Gabčíkovo-Nagymaros Project (*Hungary/Slovakia*)	1993-
Ahmadou Sadio Diallo (*Republic of Guinea* v. *Democratic Republic of the Congo*)	1998-2012
Armed Activities on the Territory of the Congo (*Democratic Republic of the Congo* v. *Uganda*)	1999-
Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Croatia* v. *Serbia*)	1999-
Territorial and Maritime Dispute (*Nicaragua* v. *Colombia*)	2001-
Maritime Dispute (*Peru* v. *Chile*)	2008-
Aerial Herbicide Spraying (*Ecuador* v. *Colombia*)	2008-
Application of the Interim Accord of 13 September 1995 (*the former Yugoslav Republic of Macedonia* v. *Greece*)	2008-2011
Jurisdictional Immunities of the State (*Germany* v. *Italy: Greece intervening*)	2008-2012
Questions relating to the Obligation to Prosecute or Extradite (*Belgium* v. *Senegal*)	2009-2012
Whaling in the Antarctic (*Australia* v. *Japan*)	2010-
Frontier Dispute (*Burkina Faso/Niger*)	2010-
Certain Activities Carried Out by Nicaragua in the Border Area (*Costa Rica* v. *Nicaragua*)	2010-
Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia *v.* Thailand) (*Cambodia* v. *Thailand*)	2011-
Construction of a Road in Costa Rica along the San Juan River (*Nicaragua* v. *Costa Rica*)	2011-

Title	*Dates*
(*b*) Advisory	
Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development	2010-2012

CHAPTER I

ORGANIZATION OF THE COURT

The organization of the International Court of Justice is governed by Articles 2-33 of the Statute of the Court and by Articles 1-18 and 32-37 of the Rules of Court.

I. MEMBERS OF THE COURT

1. Composition of the Court[1]

The Court consists of 15 Members (Statute, Art. 3, para. 1).
On 31 July 2012 the composition of the Court was as follows:

Order of precedence	*Country*	*Date of expiry of term of office*
President		
Peter Tomka	Slovakia	5 February 2021[2]
Vice-President		
Bernardo Sepúlveda-Amor	Mexico	5 February 2015[2]
Judges		
Hisashi Owada	Japan	5 February 2021
Ronny Abraham	France	5 February 2018
Kenneth Keith	New Zealand	5 February 2015
Mohamed Bennouna	Morocco	5 February 2015
Leonid Skotnikov	Russian Federation	5 February 2015
Antônio A. Cançado Trindade	Brazil	5 February 2018
Abdulqawi A. Yusuf	Somalia	5 February 2018
Christopher Greenwood	United Kingdom	5 February 2018
Xue Hanqin	China	5 February 2021
Joan E. Donoghue	United States	5 February 2015
Giorgio Gaja	Italy	5 February 2021
Julia Sebutinde	Uganda	5 February 2021
Dalveer Bhandari	India	5 February 2018[3]

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[1] For the composition of chambers, see pp. 11-12, below.

[2] The terms of office of Judges Tomka and Sepulveda-Amor as President and Vice-President respectively expire on 5 February 2015.

[3] Mr. Bhandari (India) was elected to replace Judge Al-Khasawneh (Jordan), following his resignation. He will hold office for the remainder of Judge Al-Khasawneh's term, which will expire on 5 February 2018.

The Members of the Court are elected for nine years, one-third of the total number of judges being elected every three years; they may be re-elected (Statute, Art. 13). In the event of a vacancy, an election is held and the new judge holds office for the remainder of his predecessor's term (Statute, Arts. 14 and 15). Though replaced, Members of the Court finish any cases they have begun (Statute, Art. 13, para. 3).

As required by Article 7 of the Statute, the Secretary-General of the United Nations prepares for each election a list of the persons nominated in accordance with Articles 5 and 6. The Members of the Court are elected by the General Assembly and the Security Council of the United Nations, proceeding independently of each other and simultaneously (Statute, Arts. 8-12). The States parties to the Statute of the Court which are not Members of the United Nations take part in the election by the General Assembly in the same manner as Members of the United Nations (General Assembly resolution 264 (III) of 8 October 1948; see Chap. III, p. 110, below).

Members of the Court elected during the same session of the General Assembly whose terms of office begin on the same date take precedence according to seniority of age; Members elected at a previous session take precedence; in the event of immediate re-election a Member retains his former precedence (Rules, Art. 3, paras. 2-4).

The Court elects its President and Vice-President; they are both elected for three years and take precedence over the other judges (Statute, Art. 21, para. 1; Rules, Art. 3, para. 5, Arts. 10-14, Art. 18, para. 2, and Art. 32).

2. Changes in the Composition of the Court in 2011-2012

On 10 November 2011, elections were held to fill the seats of Judges Hisashi Owada, Peter Tomka, Abdul G. Koroma, Bruno Simma and Xue Hanqin, whose terms of office were due to expire on 5 February 2012.

Mr. Giorgio Gaja (Italy), Ms Tsvetana Kamoneva (Bulgaria), Ms Julia Sebutinde (Uganda) and Mr. El Hadji Mansour Tall (Senegal) were also candidates in these elections.

Judges Owada, Tomka and Xue were re-elected (as from 6 February 2012). Mr. Gaja was elected as a new Member of the Court (as from 6 February 2012). He was sworn in on 12 March 2012.

The election of the fifth Member of the Court could not be concluded on 10 November 2011, since no remaining candidate obtained a majority in both the General Assembly and the Security Council. That election was postponed until 13 December 2011, on which date, Ms Julia Sebutinde was elected (as from 6 February 2012). She was sworn in on 12 March 2012.

On 6 February 2012 the Court elected Judge P. Tomka to be President and Judge B. Sepúlveda-Amor to be Vice-President for a term of three years.

On 27 April 2012, the General Assembly and the Security Council of the United Nations elected Mr. Dalveer Bhandari as a Member of the Court, with immediate effect.

Mr. Bhandari (India) succeeds Mr. Awn Shawkat Al-Khasawneh (Jordan), former judge and Vice-President of the Court, who resigned following his appointment in 2011 as Prime Minister of the Hashemite Kingdom of Jordan.

Pursuant to Article 15 of the Statute of the Court, Judge Bhandari will hold office for the remainder of Judge Al-Khasawneh's term, which will expire on 5 February 2018.

Judge Bhandari was sworn in officially at a public sitting which took place on 19 June 2012.

3. Former Presidents and Vice-Presidents of the Court

A full list of all former Presidents and Vice-Presidents of the Court, including their terms in office, can be found in Annex 2, p. 268 of this *Yearbook* and on the International Court of Justice website under the heading: "The Court/Members of the Court/Presidency".

4. Former Members of the Court

A full list of all former Members of the Court, including their nationalities and terms in office, can be found in Annex 3, p. 270 of this *Yearbook* and on the International Court of Justice website, under the heading: "The Court/Members of the Court/All Members".

II. Judges *Ad Hoc*

If in a case the Court, or a chamber of the Court, includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge; similarly, if the Court or the chamber includes upon the Bench no judge of the nationality of the parties, each of these parties may choose a judge (Statute, Art. 31; Rules, Arts. 7-8, Art. 17, para. 2, Arts. 35-37, Art. 91, para. 2, and Art. 102, para. 3, Practice Direction VII). Should there be several parties in the same interest they are reckoned for this purpose as one party only (Statute, Art. 31, para. 5; Rules, Art. 36 and Art. 37, para. 2).

A judge *ad hoc* does not necessarily have to have (and often does not have) the nationality of the designating State.

The following list contains the names of cases currently pending before the Court to which judges *ad hoc* have been appointed (unless otherwise indicated, they held the nationality of the appointing party). The full list of all judges *ad hoc* can be found in Annex 4, p. 273 of this *Yearbook* and on the International Court of Justice website, under the heading: "The Court/Judges *Ad Hoc*/All Judges *Ad Hoc*".

Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo). Mr. Mohammed Bedjaoui (Algeria) was chosen by the Republic of Guinea and Mr. Auguste Mampuya Kanunk'A-Tshiabo by the Democratic Republic of the Congo. Following the resignation of Mr. Bedjaoui, on 10 September 2002, Mr. Ahmed Mahiou (Algeria) was chosen by the Republic of Guinea.

Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. *Uganda).* Mr. Joe Verhoeven (Belgium) was chosen by the Democratic Republic of the Congo and Mr. James L. Kateka (Tanzania) was chosen by Uganda.

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. *Serbia).* Mr. B. Vukas was chosen by Croatia and Mr. M. Kreća by Serbia.

Territorial and Maritime Dispute (Nicaragua v. *Colombia).* Nicaragua chose Mr. Mohammed Bedjaoui to sit as judge *ad hoc*; following the latter's resignation, it chose Mr. Giorgio Gaja. Following Mr. Gaja's election as a Member of the Court, it chose Mr. Thomas A. Mensah to sit as judge *ad hoc*[1]. Colombia chose Mr. Yves L. Fortier to sit as judge *ad hoc*; following the latter's resignation, it chose Mr. Jean-Pierre Cot.

Maritime Dispute (Peru v. *Chile).* Mr. Gilbert Guillaume (France) was chosen by Peru. Mr. Francisco Orrego Vicuña was chosen by Chile.

Aerial Herbicide Spraying (Ecuador v. *Colombia).* Mr. Raúl Emilio Vinuesa (Argentina) was chosen by Ecuador. Mr. Jean-Pierre Cot (France) was chosen by Colombia.

Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. *Greece).* Mr. Budislav Vukas (Croatia) was chosen by Macedonia and Mr. Emmanuel Roucounas was chosen by Greece.

Jurisdictional Immunities of the State (Germany v. *Italy: Greece intervening).* Mr. Giorgio Gaja was chosen by Italy.

Questions relating to the Obligation to Prosecute or Extradite (Belgium v. *Senegal).* Mr. Philippe Kirsch (Belgium/Canada) was chosen by Belgium and Mr. Serge Sur (France) was chosen by Senegal.

Whaling in the Antarctic (Australia v. *Japan).* Ms Hilary Charlesworth was chosen by Australia.

Frontier Dispute (Burkina Faso/Niger). Burkina Faso chose Mr. Jean-Pierre Cot to sit as judge *ad hoc*. Following the latter's resignation, Burkina Faso chose Mr. Yves Daudet. Niger chose Mr. Ahmed Mahiou.

Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. *Nicaragua).* Costa Rica chose Mr. John Dugard and Nicaragua chose Mr. Gilbert Guillaume.

Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand).* Cambodia chose Mr. Gilbert Guillaume and Thailand Mr. Jean-Pierre Cot.

Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. *Costa Rica).* Nicaragua chose Mr. Gilbert Guillaume and Costa Rica Mr. Bruno Simma to sit as judges *ad hoc*.

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[1] In view of that choice, Judge Gaja considered that it seemed appropriate for him, as the former judge *ad hoc* chosen by Nicaragua, not to take part in any further proceedings concerning the case.

III. Chambers

1. Chamber of Summary Procedure

The Statute (Art. 29) provides that, with a view to the speedy despatch of business, the Court shall form annually a Chamber composed of five judges which, at the request of the parties, may hear and determine cases by summary procedure. The Court also selects two judges for the purpose of replacing judges who find it impossible to sit in the Chamber. Under Article 15 of the Rules of Court, the President and Vice-President are members of this Chamber ex officio, the other members and the substitutes being elected. The Chamber of Summary Procedure has never as yet been called upon to meet.

The Chamber of Summary Procedure is at present composed as follows: President Tomka; Vice-President Sepúlveda-Amor; Judges Yusuf, Xue and Donoghue, Members; Judges Skotnikov and Gaja, Substitute Members.

2. Chambers Provided for in Article 26, Paragraph 1, of the Statute

The Statute (Art. 26, para. 1) provides also that the Court may from time to time form one or more chambers, composed of three or more judges, as the Court may determine, for dealing with particular categories of cases; for example, labour cases and cases relating to transit and communications. Cases are heard and determined by these chambers if the parties so request.

In 1993, the Court established a Chamber for Environmental Matters, which was periodically reconstituted until 2006. In the Chamber's 13 years of existence, however, no State ever requested that a case be dealt with by it. The Court consequently decided in 2006 not to hold elections to re-elect a Bench for the said Chamber.

3. Chambers Formed under Article 26, Paragraph 2, of the Statute

The Statute (Art. 26, para. 2) provides that the Court may form a chamber to deal with a particular case, the number of judges constituting such a chamber being determined by the Court with the approval of the parties.

Chambers of this kind have been formed at the joint request of the parties to deal with six cases. For the full list of these cases, including an indication of the date on which the respective chamber was constituted, the names of its members and the dates that the chambers were dissolved, please see Annex 5, p. 281 of this *Yearbook*.

4. Provisions in the Rules relating to Chambers

Articles 15-18 and 90-93 of the Rules of Court contain the provisions relating to chambers.

IV. ASSESSORS

Article 30, paragraph 2, of the Statute and Article 9 of the Rules of Court provide that the Court may, either *proprio motu* or upon a request made not later than the closure of the written proceedings, decide, for the purpose of a contentious case or request for advisory opinion, to appoint assessors to sit with it, without the right to vote. The chambers also have the power to appoint assessors.

These provisions have so far never been applied.

V. THE REGISTRAR

The Court appoints its Registrar (Statute, Art. 21, para. 2; Rules, Art. 22).

The present Registrar is Mr. Philippe Couvreur (see Chap. IV, p. 126, below)

VI. PRIVILEGES AND IMMUNITIES

Article 19 of the Statute provides: "The Members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities."

In the Netherlands, pursuant to an exchange of correspondence between the President of the Court and the Minister for Foreign Affairs, dated 26 June 1946, they enjoy, in a general way, the same privileges, immunities, facilities and prerogatives as Heads of Diplomatic Missions accredited to Her Majesty the Queen of the Netherlands (*I.C.J. Acts and Documents No. 6*, pp. 205-211). In addition, in accordance with the terms of a letter dated 26 February 1971 from the Minister for Foreign Affairs of the Netherlands, the President of the Court takes precedence over the Heads of Mission, including the Dean of the Diplomatic Corps, who is immediately followed by the Vice-President of the Court and thereafter the precedence proceeds alternately between Heads of Mission and the Members of the Court (*ibid.*, pp. 215-217).

By resolution 90 (I) of 11 December 1946 (*ibid.*, pp. 211-215), the General Assembly of the United Nations approved the agreement concluded with the Government of the Netherlands in June 1946 and recommended that ". . . if a judge, for the purpose of holding himself permanently at the disposal of the Court, resides in some country other than his own, he should be accorded diplomatic privileges and immunities during the period of his residence there" and that

> "Judges should be accorded every facility for leaving the country where they may happen to be, for entering the country where the Court is sitting, and again for leaving it. On journeys in connection with the exercise of their functions, they should, in all countries through which they may have to pass, enjoy all the privileges, immunities and facilities granted by these countries to diplomatic envoys."

The same resolution contains also a recommendation calling upon Members of the United Nations to recognize and accept laissez-passer issued by the Court to the judges. Such laissez-passer have been issued since 1950. They are similar in form to those issued by the Secretary-General of the United Nations and are signed by the President of the Court and the Registrar.

Furthermore, Article 32, paragraph 8, of the Statute provides that the "salaries, allowances and compensation" received by judges "shall be free of all taxation".

CHAPTER II

BIOGRAPHIES OF JUDGES

Biographies of judges who held office in the period 1 August 2011 to 31 July 2012 will be found below.

I. MEMBERS OF THE COURT ON 31 JULY 2012

President Peter TOMKA

(Member of the Court since 6 February 2003; President of the Court since 6 February 2012; Vice-President of the Court from 2009 to 2012; Acting President in the cases concerning *Pulp Mills on the River Uruguay* (*Argentina* v. *Uruguay*) (2009-2010) and *Whaling in the Antarctic* (*Australia* v. *Japan*) (2010-2012))

Born in Banská Bystrica, Slovakia, on 1 June 1956.

LL.M. (*summa cum laude*), Faculty of Law, Charles University, Prague (1979). *Doctor juris* (International Law), Charles University (1981). Ph.D. in International Law, Charles University (1985). Faculty of International Law and International Relations, Kiev, Ukraine (1982). Institut du droit de la paix et du développement, Nice, France (1984-1985). Institute of International Public Law and International Relations, Thessaloniki, Greece (1985). Hague Academy of International Law (1988).

Assistant Legal Adviser (1986-1990); Head of the Public International Law Division (1990-1991), Ministry of Foreign Affairs, Prague. Counsellor and Legal Adviser (1991-1992), Permanent Mission of Czechoslovakia to the United Nations. Ambassador, Deputy Permanent Representative (1993-1994), and Ambassador, Acting Permanent Representative of Slovakia to the United Nations (1994-1997). Legal Adviser and Director of the International Law Department (1997-1998); Director General for International Legal and Consular Affairs and Legal Adviser (1998-1999), Ministry of Foreign Affairs, Bratislava, Slovakia. Ambassador, Permanent Representative of Slovakia to the United Nations (1999-2003).

Chairman of the United Nations Committee on the Applications for Review of the Judgements of the Administrative Tribunal (1991). Vice-Chairman of the Sixth (Legal) Committee of the United Nations General Assembly (1992). Chairman of the Working Group on the United Nations Decade of International Law (1995). Chairman of the Meeting of the States Parties to the International Covenant on Civil and Political Rights (1996). Vice-President of the Sixth Meeting of the States Parties to the United Nations Convention on the Law of the Sea (1996). Chairman of the Sixth (Legal) Committee of the Fifty-Second Session of the United Nations General Assembly (1997). Vice-Chairman of the Preparatory

Committee for the International Criminal Court (1998). President of the Ninth Meeting of the States Parties to the United Nations Convention on the Law of the Sea (1999). Chairman of the *Ad Hoc* Committee on the International Convention against the Reproductive Cloning of Human Beings (2002). Member of the Ambassadorial Panel of Experts to advise the Division for Ocean Affairs and the Law of the Sea (2002).

Member (1999-2003), Second Vice-Chairman (2000), Chairman of the Drafting Committee (2001), United Nations International Law Commission.

Delegate of Czechoslovakia to the XXVth International Conference of the Red Cross, Geneva (1986).

Representative of Czechoslovakia to the Preparatory Commission for the International Sea Bed Authority and the International Tribunal for the Law of the Sea (1987-1992). Alternate Representative of Czechoslovakia in the United Nations General Assembly, Forty-Sixth and Forty-Seventh Sessions, and Adviser at the Forty-Fifth Session (1990-1992). Representative of Czechoslovakia in the Sixth Committee (1990-1992). Head of the delegation of Czechoslovakia to the Meeting of the States Parties to the Antarctic Treaty, Madrid (1991). Head of the delegation of Czechoslovakia to the CSCE Meeting of Experts on the Peaceful Settlement of Disputes in Europe, Valletta, Malta (1991). Representative of Slovakia to the United Nations General Assembly, Forty-Eighth to Fifty-Seventh Sessions (1993-2002), and Deputy Head of delegation at the Forty-Ninth to Fifty-First and Fifty-Fourth to Fifty-Seventh Sessions. Representative of Slovakia in the Sixth Committee (1993-2002). Representative of Slovakia to the Preparatory Commission for the International Sea Bed Authority and the International Tribunal for the Law of the Sea (1993-1994). Head of the delegation of Slovakia to the Assembly of the International Sea Bed Authority (1994-1996). Alternate Head of the delegation of Slovakia to the Diplomatic Conference on the Establishment of the International Criminal Court (1998).

Agent of Slovakia before the International Court of Justice in the case concerning the *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* (1993-2003).

Expert of Slovakia in the ICSID case No. ARB/97/4, *Československá obchodní banka (ČSOB) v. Slovak Republic* before the International Centre for Settlement of Investment Disputes (Jurisdiction) (1997-1999).

Member of the Permanent Court of Arbitration (since 1994). Arbitrator in the *Iron Rhine (Belgium/Netherlands)* case (2003-2005) and the *Request for Interpretation of the Award of the Arbitral Tribunal* (2005). Member of the Court of Arbitration in the *Indus Waters Kishenganga Arbitration (Pakistan v. India)* (2010-).

On the list of arbitrators nominated under Annex VII to the United Nations Convention on the Law of the Sea (since 2004) and at the International Centre for Settlement of Investment Disputes (since 2005).

Member or President of several *ad hoc* annulment committees and arbitral tribunals.

Chairman of the Committee of Legal Advisers on Public International Law, Council of Europe (2001-2002); Vice-Chairman (1999-2000).

Legal Adviser of the Czechoslovak delegation at the negotiations on the withdrawal of Soviet military forces from Czechoslovakia (1989-1990). Legal Adviser of the Czechoslovak delegation at the negotiations concerning the dissolution of the Warsaw Pact (1991).

Lecturer (1980-1984), Senior Lecturer (1984-1991), Public International Law, Charles University, Prague. General Course on Public International Law, Institute of International Relations, Comenius University, Bratislava (1998-1999).

Gave lectures at Bucharest University Law School, Columbia Law School, Cologne Law School, Czech Society of International Law, ILC Seminar in Geneva, Lauterpacht Research Centre in Cambridge, Chungnam National University (Daejeon, Republic of Korea), Korean Society of International Law (Seoul), NALSAR Hyderabad (India), Matej Bel University, New York University School of Law, University of Glasgow, Pan-European University School of Law, St. Petersburg University Law School, Slovak Society of International Law, Stockholm University and for students of Harvard Law School, University of Paris Ouest Nanterre-La Défense, University of Vienna, Webster University and Leiden University.

Gave lectures on "The International Court of Justice and the International Law Commission: Their Roles and Interactions in the Development of International Law" at Xiamen Academy of International Law (China) in 2012.

Member (1981-1992) and Secretary (1986-1991) of the Czechoslovak Society of International Law. Member (1988-2001) and Secretary (1988-1991) of the Czechoslovak Branch of the International Law Association (ILA). Member (since 1982) and Honorary President (since 2003) of the Slovak Society of International Law. Member of the American Society of International Law (since 2000). Member of the European Society of International Law (since 2004). Member of the International Arbitration Institute (since 2005). Member, Board of Editors of the journal *Právnik (The Lawyer)*, published by the Czechoslovak Academy of Science (1990-1991).

Member of the Supervisory Board of Telders International Law Moot Court Competition (since 2006). Member of the Board of *Acta Universitatis Carolinae-Iuridica* (since 2008). Member of the Advisory Board of the International Institute of Air and Space Law, Leiden University (since 2008).

Member of the Editorial Advisory Board of the ICSID Review — Foreign Investment Law Review (2012-).

Associate Member of the Institute of International Law (elected at the Rhodes Session in 2011).

Member of the Advisory Board of the *Czech Yearbook of International*

Law (since 2009). Member of the Scientific Council of Charles University Law School (since 2010).

Author of a doctoral thesis on the *Codification of International Law* (Charles University, Prague, 1984) and of a series of articles in Slovak and Czech on forms of codification of international law, the International Court of Justice, the peaceful resolution of international disputes in Europe, the establishment of the International Criminal Court, the Draft Code of Crimes against the Peace and Security of Mankind; co-author of a collection of *Documents for the Study of the Law of the European Communities* (1991). Publications in English and French: "The First Site Visit of the International Court of Justice in Fulfilment of Its Judicial Function", *American Journal of International Law*, Vol. 92, 1998 (co-author with S. Wordsworth); "Major Complexities Encountered in Contemporary International Law-Making", *Making Better International Law: The International Law Commission at 50*, 1998; "The Special Agreement", *Liber Amicorum Judge Shigeru Oda* (N. Ando, E. McWhinney and R. Wolfrum, eds.), Vol. I, 2002; "La Cour internationale de Justice en tant que l'Organe judiciaire principal des Nations Unies. Commentaire sur l'article 92 de la Charte", *La Charte des Nations Unies, Commentaire article par article* (J.-P. Cot and A. Pellet, eds.), 3rd ed., Vol. II, 2005; "Comment on the Unity and Diversity of International Law in the Settlement of International Disputes", *Unity and Diversity in International Law* (A. Zimmermann and R. Hofmann, eds.), 2006; "Are States Liable for the Acts of Their Instrumentalities?", *State Entities in International Arbitration* (E. Gaillard, ed.), 2008. "Interim Measures of Protection in the International Tribunal for the Law of the Sea", in *Coexistence, Co-operation and Solidarity — Liber Amicorum Rüdiger Wolfrum*, (co-authored with G. Hernández), Brill, 2011. *Elettronica Sicula* case (*United States of America* v. *Italy*), *Max Planck Encyclopedia of Public International Law* (R. Wolfrum, ed.), Oxford University Press, online edition, 2008. *Fisheries Jurisdiction* cases (*United Kingdom* v. *Iceland; Federal Republic of Germany* v. *Iceland*), *Frontier Dispute* case (*Burkina Faso/Republic of Mali*), *Sovereignty over Certain Frontier Land* case (*Belgium/Netherlands*), *Max Planck Encyclopedia of Public International Law* (R. Wolfrum, ed.), Oxford University Press, 2012.

Vice-President Bernardo SEPULVEDA-AMOR

(Member of the Court since 6 February 2006;
Vice-President since 6 February 2012)

Born in Mexico City on 14 December 1941.

Law Degree, National University of Mexico (1964) (*magna cum laude*); LL.M. (Cantab.) (1966); Diploma in International Law (Cantab.) (1965); Honorary Fellow of Queens' College, University of Cambridge (1990); Honorary Doctorate from the University of San Diego (1982) and from the University of Leningrad (now St. Petersburg) (1987); Rockefeller Foundation Fellowship (1964-1966).

Professor of International Law and International Organizations at El Colegio de México since 1967 where he was also Associate Research Fellow (1993-2006). Lecturer in a number of academic institutions: Faculty of Political and Social Sciences (National University of Mexico); Institute of Legal Research (National University of Mexico); Centro de Investigación y Docencia Ecónomicas (CIDE); Instituto Tecnológico Autónomo de México (ITAM); Instituto Matias Romero de Estudios Diplomáticos (Mexican Foreign Office); Hague Academy of International Law (Regional Programme, Mexico City, 2002); Institute of European Integration Studies (El Colegio de México, 1994-1996).

Deputy Director for Legal Affairs, Secretary of the Presidency (1968-1970); Director of the Foreign Investment Program (1971-1975) and then Director General for International Affairs (1976-1980) at the Secretary of the Treasury. Principal Adviser on International Affairs to the Secretary of the Budget (1981).

Ambassador of Mexico to the United States of America (1982). Ambassador of Mexico to the United Kingdom and, concurrently, to Ireland (1989-1993).

Secretary of Foreign Relations of Mexico (1982-1988). President of the Mexican delegations to the General Assembly of the United Nations and to the General Assembly of the Organization of American States, as well as of other international regional and global organizations (1982-1988).

Co-Chairman of the Mexico-United States Binational Commission, together with the United States Secretary of State (1982-1988).

As Foreign Secretary, he was responsible for the Mexican participation in the Central American peace process that took place from 1982 to 1988. For those purposes and together with Venezuela, Colombia and Panama, he established the Contadora Group as a diplomatic instrument to bring peace and stability to the area.

Together with the Foreign Ministers of Argentina, Brazil, Colombia, Panama, Peru, Uruguay and Venezuela, he took part in the creation of the Group of Eight, now the Rio Group, an institution devoted to promoting Latin American co-operation; under its auspices, presidential summits have taken place since 1987.

Member of a number of Mexican delegations to United Nations conferences, where he attended, among others, the United Nations Conference on the Law of the Sea, the Vienna Conference on the Law of Treaties and several United Nations conferences on disarmament. He was a Member of the Mexican delegation to the 1981 Cancun Meeting of Heads of State and Government.

In 1980 he became President of the United Nations Commission on Transnational Corporations; elected Rapporteur of the Inter-Governmental Working Group on a Code of Conduct for Transnational Corporations (1978-1980); he was the Mexican representative to the Commission on Transnational Corporations (1977-1981).

Member of the Mexican delegations to the annual meetings of the International Monetary Fund, the World Bank and the Inter-American Development Bank, as well as the Group of 24 (1976-1980).

Member of the United Nations International Law Commission (1996-2005). Associate Member of the Institut de droit international, elected in 2011 in Rhodes, Greece.

Judge *ad hoc* of the International Court of Justice in the case concerning *Avena and Other Mexican Nationals (Mexico v. United States of America)*.

President of the arbitral tribunal in the ICSID case *Empresa Eléctrica del Ecuador, Inc. (EMELEC) v. Ecuador* (case No. ARB/05/9) and President of the arbitral tribunal in an ICC case.

Member of the Board of Trustees of the Permanent Court of Arbitration Financial Assistance Fund (since 2006). Member of the Panel of Arbitrators of the International Centre for Dispute Resolution (ICDR), the international division of the American Arbitration Association. Member of the Institute for Transnational Arbitration (ITA), a division of the Center for American and International Law. Member of the Commission of Arbitration of the Mexican Chamber of Commerce.

Member of the Executive Council of the American Society of International Law (1974-1975). President of the Mexican Branch of the International Law Association (ILA) (2000-2005).

Member of the Executive Council of Transparencia Mexicana, a non-governmental organization linked to Transparency International.

Member of the Executive Board of the Mexican Council of Foreign Relations.

Member of the Editorial Board of *Foro Internacional*, the journal of international affairs of El Colegio de México (1968-2004).

In the private sector, he acted as General Counsel of Grupo ICA, the largest infrastructure enterprise in Mexico.

He has written books and articles on the United Nations, international law, foreign policy and international economic issues.

Publications include: "Las Naciones Unidas, el Tratado de Rio y la OEA" (The United Nations, the Rio Treaty and the Organization of American States (OAS)), *Foro Internacional*, Vol. VII, Nos. 1-2, 1967; *Las Naciones Unidas: dilema a los 25 años* (The United Nations: Dilemma at 25 years) (co-editor), El Colegio de México, 1970; "Derecho del Mar: apuntes sobre el sistema legal mexicano" (Law of the sea: Notes on the Mexican legal system), *La politica exterior de México: realidad y perspectivas*, El Colegio de México, 1972; "Los origenes politicos del Porfiriato" (Political origins of the Porfiriato), *Foro Internacional*, Vol. XII, No. 3, 1972; *La inversión extranjera en México* (Foreign investment in Mexico), Fondo de Cultura Económica, 1973; *Las empresas transnacionales en México* (Transnational corporations in Mexico), El Colegio de México, 1974; "A Mexican view of foreign investment", *Proceedings of the 68th Annual Meeting of the American Society of International Law*, 1974; "Mexico and the Law of the Sea", in *The Changing Law of the Sea: Western Hemisphere Perspectives*, Ralph Zacklin (ed.), Sijthoff, 1974; "La estrategia de las corporaciones transnacionales y el sistema juridico de los Estados: la experiencia latinoamericana" (Strategies of transnational corporations and legal systems of States: the Latin American experience), OAS, Series K/XXI.1; Inter-American Convention on General Rules of Private International Law (CIDIP)-IV (mimeograph), 1974; "GATT, ALALC y el trato de más favor" (General Agreement on Tariffs and Trade (GATT), Latin American Free Trade Association (LAFTA) and Most Favoured Nation Treatment), in *Lecturas: Derecho Económico Internacional*, Fondo de Cultura Económica, 1974; "Las empresas transnacionales y la transferencia de tecnologia: perspectivas para su regulación internacional" (Transnational corporations and the transfer of technology: views on international controls), in *Los problemas de un mundo en proceso de cambio*, Luis González Souza and Ricardo Méndez Silva (eds.), Universidad Autónoma de México (UNAM), 1978; "Perspectivas de un pais de desarrollo intermedio sobre la economia internacional" (Views of a developing country on the international economy), *Visión del México contemporáneo*, El Colegio de México, 1979.

"Las nuevas reglas del GATT y el sistema legal mexicano" (The new GATT rules and the Mexican legal system), *Comercio Exterior*, 1980; "Inversión extranjera, deuda externa y comercio exterior: notas sobre el orden juridico mexicano" (Foreign investment, external debt and foreign trade: notes on the Mexican legal order), *Anuario Juridico*, Instituto de Investigaciones Juridicas de la UNAM, 1980; "La crisis económica mundial: el nuevo orden internacional y la planeación: comentarios" (The world economic crisis: the new international order and planning: commentaries), in *Planeación para el desarrollo*, SPP/Fondo de Cultura Económica, 1981; "La regulación internacional de las empresas transnacionales" (International regulation of transnational corporations), *Foro Internacional*, No. 84, 1981; "La regulación juridica de las inversiones extranjeras en México" (Legal regulation of foreign investments in Mexico), *Aspectos juridicos de la planeaciónen México*, SPP/Editorial Porrúa, 1981; "Perspectivas de la relación entre México y Estados Unidos" (Perspectives on the relationship between Mexico and the United States), in Institutional Revolutionary Party, Comisión de Asuntos Internacionales, *Grandes temas de politica exterior*, Fondo de Cultura Económica, 1983, pp. 308-310; "Reflexiones sobre la politica exterior de México" (Reflections on Mexican foreign policy), *Foro Internacional*, Vol. XXIV, No. 4, 1984; "México en las Naciones Unidas: un balance de cuatro décadas" (Mexico in the United Nations: taking stock after four decades), in *México en las Naciones Unidas*, México, Secretariat of Foreign Affairs, 1986, pp. 7-13; "Politica exterior de México Discursos y documentos" (Mexican foreign policy statements and documents), six volumes covering the period from 1983 to 1988, México, Secretariat of Foreign Affairs, 1983-1988; "México en la concertación politica internacional" (Mexico in the international political sphere), in Rosario Green (ed.), *México y sus estrategias internacionales*, Diana, 1989, pp. 119-133.

"Latin American-European Relations in the 1990s", in Dermot Keogh (ed.), *Beyond the Cold War: Europe and the Superpowers in the 1990s*, Hibernian University Press, 1990, pp. 94-106; "La politica exterior de México en la coyuntura internacional" (Mexican foreign policy at the current international juncture), in *Coloquio de Invierno. Los grandes cambios de nuestro tiempo: la situación internacional, América Latina y México. México y los cambios de nuestro tiempo*, Vol. III, UNAM/Consejo Nacional para la Cultura y las Artes (CONACULTA)/Fondo de Cultura Económica, 1992, pp. 290-300; "Politica exterior y estrategias de seguridad y defensa: los trabajos de la Comunidad Europea" (Foreign policy and security and defence strategies: the work of the European Community), *México y Europa*, México, Secretariat of Foreign Affairs, 1992; "Seguridad y defensa: después de Maastricht" (Security and defence: after Maastricht), *Nexos*, No. 172, 1992; "Doctrina y práctica de la politica exterior de México (1982-1988)" (Doctrine and practice in Mexican foreign policy (1982-1988)), Ensayos Jalincienses, El Colegio de Jalisco, 1993; "Régimen de partidos y renovación continua" (The party system and continuing renewal), *Examen*, No. 67, 1994; "Política exterior para el desarrollo nacional (Foreign policy for national development), *Examen*, No. 54, 1993; "Politica exterior y tratado de libre comercio" (Foreign policy and the free trade agreement), *Comercio Exterior*, 1994; "Los intereses de la politica exterior" (Foreign policy interests), in César Sepúlveda (ed.), *La politica internacional de México en el decenio de los ochenta*, Fondo de Cultura Económica, 1994; "Asuntos internacionales de México: una bibliografia (1980-1993)" (Mexican international affairs: a bibliography (1980-1993)), in César Sepúlveda (ed.), *La politica internacional de México en el decenio de los ochenta*, Fondo de Cultura Económica, 1994; "Los intereses de la politica exterior" (Foreign policy interests), *Nexos*, No. 203, 1994; "No intervención y derecho de injerencia: el imperio o la decadencia de la soberania" (Non-intervention and the right to intervene: the preponderance or erosion of sovereignty), in Modesto Seara Vázquez (ed.), *Las Naciones Unidas a los 50 años*, Fondo de Cultura Económica, 1995; "El oficio internacional" (International vocation), introduction to the *Obras Completas de Jorge Castañeda*, three volumes, co-published by El Colegio de México and the Secretariat of Foreign Affairs, 1995; "México, el Consejo de Seguridad y el futuro de las Naciones Unidas" (Mexico, the Security Council and the future of the United Nations), *Foro Internacional*, No. 142, 1995, El Colegio de México; "Un galope en la obscuridad: México, el Consejo de Seguridad y el futuro de la ONU" (Galloping into the darkness: Mexico, the Security Council and the future of the United Nations), *Enfoque*, Sunday supplement to the newspaper *Reforma*, 1995; "El Senado y la politica exterior" (The Senate and foreign policy), in *Libro homenaje a Rafael Segovia, con motivo de su designación como profesor emérito del Colegio de México*, El Colegio de México, Fondo de Cultura Económica, Consejo Nacional de Ciencia y Tecnologia

(CONACYT), 1998; "El equilibrio del poder en perspectiva" (The balance of power in perspective). Review of the book *Diplomacy* by Henry Kissinger, *Este País*, 1996; "México y Europa" (Mexico and Europe), *Este País*, 1996; "Hacia un nuevo concierto europeo" (Towards a new European harmony). Commentaries on the special issue of *Revista Mexicana de Politica Exterior* (49) devoted to Mexico and the European Union, *Este País*, 1996; "México y su compromiso con la protección de los derechos humanos" (Mexico and its commitment to protecting human rights), *Revista de la Facultad de Derecho de México*, Nos. 205-206, UNAM, 1996; "México y la Unión Europea: hacia un nuevo entendimiento" (Mexico and the European Union: towards a new understanding), *Todo México 1997, Enciclopedia de México*, 1997; "Los valores éticos y el orden juridico mexicano: la perspectiva del derecho internacional" (Ethical values and the Mexican legal order from the viewpoint of international law), in Sergio Garcia Ramirez (ed.), *Los valores en el derecho mexicano*, Instituto de Investigaciones Juridicas de la UNAM/Fondo de Cultura Económica, 1997; "Objetivos e intereses de la politica exterior" (Foreign policy goals and interests), in Ilan Bizberg (ed.), *México ante el fin de la guerra fría*, Centro de Estudios Internacionales, El Colegio de México, 1998.

"Las relaciones interamericanas: cuestiones de política, derecho y diplomacia" (Inter-American relations: matters of policy, law and diplomacy), *Revista Mexicana de Politica Exterior*, No. 59, México, Secretariat of Foreign Affairs, Instituto Matías Romero, 2000; "Memorias de la diplomacia mexicana" (Recollections of Mexican diplomacy), *Revista Mexicana de Politica Exterior*, No. 60, México, Secretariat of Foreign Affairs, Instituto Matias Romero, 2000; "La globalización y las opciones nacionales: memoria. La globalización y las soberanias nacionales" (Globalization and national options: report. Globalization and national sovereignty), Fondo de Cultura Económica, 2000; "Orden y desorden internacional: La función del Estado" (International order and disorder: the role of the State), *Este País*, No. 119, 2001; "Las definiciones de la politica exterior" (Defining foreign policy), in Rafael Fernández de Castro (co-ord.), *México en el mundo: los desafíos para México en 2001*, Instituto Tecnológico Autónomo de México (ITAM), 2001; "Una asignatura pendiente: la participación de México en las operaciones de paz de la ONU" (Unfinished business: Mexico's participation in United Nations peace operations), in Miguel Covian (ed.), *Cumbre del Milenio: Hacia dónde van las Naciones Unidas?*, México, Instituto Matias Romero, Secretariat of Foreign Affairs, 2001; "Terrorismo, seguridad nacional y seguridad colectiva" (Terrorism, national security and collective security), *Este País*, 2002; "Terrorismo transnacional y seguridad colectiva" (Transnational terrorism and collective security), in Rafael Fernández de Castro (co-ord.), *Cambio y continuidad en la política exterior de México: México en el mundo 2002*, Editorial Planeta/Ariel, 2002; "Política exterior: terrorismo, seguridad nacional y seguridad colectiva" (Foreign policy: terrorism, national security and collective security), in Enrique González

Pedrero (co-ord.), *México: Transiciones múltiples, gobernabilidad y Estado nacional*, México, Instituto Nacional de Administración Pública/Fondo de Cultura Económica, 2003; "El eje del mal y su destino manifiesto" (The axis of evil and its manifest destiny), in José Juan de Olloqui (co-ord.), *Problemas jurídicos y políticos del terrorismo*, Instituto de Investigaciones Juridicas, UNAM, 2003; "Educar para entender" (Educating for understanding), *Este País*, 2003; "Orden jurídico y derechos humanos" (The legal order and human rights), *Este País*, 2004; "Derechos humanos: México en la perspectiva internacional" (Human rights: Mexico from an international perspective), *Iurisdictio*, bulletin of the High Court of Justice of the State of Querétaro, 2005; "Mexico and the settlement of investment disputes: ICSID as the recommended option", The Institute for Transnational Arbitration, Vol. 19, No. 1, 2005; "Una perspectiva mexicana de los asuntos internacionales" (A Mexican perspective on international affairs), *Este País*, 2005; "México y el arreglo de controversias en materia de inversión: el CIADI como opción necesaria", in Gustavo Vega (co-ord.), *Bernardo Sepúlveda, Juez de la Corte Internacional de Justicia*, El Colegio de México, 2007.

Pinson Claim Arbitration (*France v. Mexico*), *Max Planck Encyclopedia of Public International Law*, www.mpepil.com; "Contribution of the International Court of Justice to the Development of the Law of the Sea", *Aegean Review on the Law of the Sea*, Aegean Institute of the Law of the Sea and Maritime Law, Springer, 2009; "Las politicas mexicanas en los espacios de la jurisdicción internacional" (Mexican policy and international jurisdiction) en *Diálogos sobre la Justicia Internacional*, B. Sepúlveda-Amor (co-ord.), Mexico, Editorial Trillas, 2009; "La Corte Internacional de Justicia y la expansión y profundización de un orden jurídico: contribuciones recientes" (2006-2009) (The International Court of Justice and the expansion of a legal order), to be published by the Faculty of Law of the National University of Mexico.

International Court of Justice: separate opinion of Judge *ad hoc* Bernardo Sepúlveda-Amor in the case concerning *Avena and Other Mexican Nationals* (*Mexico v. United States of America*), Judgment, 31 March 2004; dissenting opinion of Judge Bernardo Sepúlveda-Amor in *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico *v.* United States of America), Judgment, 19 January 2009; separate opinion of Judge Bernardo Sepulveda-Amor in the case concerning the *Dispute regarding Navigational and Related Rights* (*Costa Rica v. Nicaragua*), Judgment, 13 July 2009; opinions (for the text of the opinions, see www.icj-cij.org).

In 1984, he received from King Juan Carlos of Spain the Principe de Asturias Prize in the field of international co-operation. In 1985, UNESCO awarded him the Simón Bolivar Prize. He is the recipient of a number of orders, decorations and medals awarded by foreign governments, which include, among others, the Knights Grand Cross of the Order of Saint Michael and Saint George (Great Britain); the Grand

Cross, Order of Isabel la Catolica (Spain); the Grand Cross, Order of General San Martin (Argentina); Ribbon, Order of Kwang-Wha (Republic of Korea); the Grand Cross, Order of Cristo (Portugal); Order of the Republic of Egypt, First Class; the Grand Cross of the Order of Cruzeiro do Sul (Brazil); the Grand Cordon, Order of the Rising Sun (Japan); Grand Officer, Ordre de la Légion d'honneur (France).

Judge Hisashi OWADA

(Member of the Court since 6 February 2003;
President of the Court from 6 February 2009 to 5 February 2012;
re-elected as Member of the Court from
6 February 2012)

Born in Niigata, Japan, on 18 September 1932.

B.A., University of Tokyo (1955). LL.B., Cambridge University (1956). D. Phil. (*honoris causa*), Keiwa University, Japan (2000). LL.D. (*honoris causa*), Banaras Hindu University, India (2001), Waseda University, Japan (2004) and Groningen University, the Netherlands (2009).

Honorary Professor, Leiden University. Professor and Academic Adviser, Hiroshima University. Professor, New York University Global Law School. *Président*, Institut de droit international (2011). Member, Permanent Court of Arbitration. Honorary Member, American Society of International Law. Former President and Honorary President, Asian Society of International Law. Member Emeritus, Japanese Society of International Law. Member, Executive Council, International Law Association. Honorary Fellow, Trinity College, Cambridge.

Entered the Foreign Service of Japan, Legal Department, Ministry of Foreign Affairs in 1955. Private Secretary to the Minister for Foreign Affairs of Japan (1971-1972). Private Secretary to the Prime Minister of Japan (1976-1978). Director General, Treaties Bureau (Principal Legal Adviser), Ministry of Foreign Affairs (1984-1987). Ambassador, Permanent Representative of Japan to the OECD (1988-1989). Deputy Minister, Ministry of Foreign Affairs (1989-1991). Vice-Minister for Foreign Affairs of Japan (1991-1993). Ambassador, Permanent Representative of Japan to the United Nations (1994-1998). Special Adviser to the Minister for Foreign Affairs of Japan (1998-2003). President of the Japan Institute of International Affairs (1999-2003). Senior Adviser to the President of the World Bank (1999-2003).

Adjunct Professor of International Law, University of Tokyo (1963-1988). Visiting Professor of International Law, Harvard Law School (1979-1981, 1987, 1989, 2000-2002). Inge Rennert Distinguished Visiting Professor of International Law, New York University Law School (1994-1998). Adjunct Professor of International Law, Columbia Law School (1994-1998). Professor, the Hague Academy of International Law (1999). Professor of International Law, Waseda University Graduate School (2000-2003). Visiting Fellow Commoner, Trinity College, Cambridge (2002).

Member of the Japanese delegation to the Second United Nations Conference on the Law of the Sea (1960). Alternate Representative of Japan to the United Nations Conference on the Law of Treaties (1968-1969). Head of the Japanese delegation to the Committee on Peaceful Uses of the Sea Bed and Ocean Floor (1968-1972). Head of the Japanese delegation to the Legal Sub-Committee of the United Nations Committee on Peaceful Uses of Outer Space (1968-1970). Head of the Japanese delegation to the United Nations Special Committee on Friendly Relations (1968-1970) and Chairman of the Drafting Committee (1970). Rapporteur of the Sixth Committee of the United Nations General Assembly, Twenty-Fifth Session (1970). Member of the Japanese delegation to the United Nations General Assembly, Twenty-Third to Twenty-Fifth Sessions (Sixth Committee) (1968-1970). Alternate Representative of Japan to the United Nations General Assembly, through Twenty-Seventh to Twenty-Eighth Sessions (1972-1973). Alternate Representative of Japan to the Third United Nations Conference on the Law of the Sea (1973-1982). Adviser to the Japanese delegation to the United Nations General Assembly, Thirty-Ninth to Forty-First (1984-1986) and Forty-Fourth to Forty-Fifth Sessions (1989-1990). Representative of Japan to the United Nations General Assembly, Forty-Ninth through Fifty-Third Sessions (1994-1998). Representative of Japan to the World Summit for Social Development in Copenhagen (1994). Representative of Japan to the Fourth World Conference on Women in Beijing (1995). Representative of Japan to the Assembly of Heads of State and Government, Organization of African Unity, 31st to 33rd Sessions (1995-1997). Representative of Japan to the General Assembly of the Organization of American States (1996). Representative of Japan to the United Nations Security Council (1997-1998), and its President (1997, 1998). Representative of Japan to the Ministerial Meeting of the Non-Aligned Movement (1997, 1998). Representative of Japan to the Summit Meeting of the Non-Aligned Movement (1998). Head of the Japanese delegation to the United Nations Diplomatic Conference on the Establishment of an International Criminal Court (1998).

Honours: Humanitarian Studentship in International Law, Cambridge University (1958-1959). Al-Istiqlal Order, First Degree, Hashemite Kingdom of Jordan (1990). *Officier*, Légion d'honneur, France (1992). Grand Cross of the Order of Merit, Federal Republic of Germany (1994).

Major publications include: *The Practice of Japan in International Law 1961-1970*, edited by Shigeru Oda and Hisashi Owada, University of Tokyo Press, 1982; *From Involvement to Engagement — The New Direction of Japanese Foreign Policy*, (Toshi Shuppan Publishers), 1994 (in Japanese); *Diplomacy*, NHK Press, 1996 (in Japanese); *For Peace and Scholarship — A Message from The Hague* 2008 (in Japanese), and other numerous articles on international law and international organizations.

Judge Ronny ABRAHAM

(Member of the Court since 15 February 2005;
re-elected as from 6 February 2009)

Born in Alexandria, Egypt, on 5 September 1951.

Diplôme d'études supérieures de droit public (Diploma in Advanced Studies in Public Law), University of Paris I (1974). Diploma of the Institut d'études politiques of Paris (1973). Alumnus of the Ecole nationale d'administration (1976-1978).

Professor of International Law, Institut d'études politiques of Paris (until 1998). Associate Professor, University of Paris X-Nanterre (1997-2003). Associate Professor, University of Paris II, Panthéon-Assas (public international law, human rights) (2004-2005).

Judge sitting in administrative courts (1978-1985 and 1987-1988). Assistant Director of the Office of Legal Affairs of the Ministry of Foreign Affairs (1986-1987). *Maître des requêtes* in the *Conseil d'Etat* (1988-2000). *Conseiller d'Etat* (from 2000). *Commissaire du gouvernement* (advocate général) before the judicial organs of the *Conseil d'Etat* (1989-1998).

Director of Legal Affairs at the French Ministry of Foreign Affairs (1998-2005). From 1998 to 2005, as head of the Legal Affairs Directorate at the Ministry of Foreign Affairs, in charge of advising the Government on legal matters in the fields of general international public law, European Union law, international human rights law, the law of the sea and the Antarctic.

From 1998 to 2004, Agent for France in many cases before international and European courts, as follows: International Court of Justice: *Legality of Use of Force (Serbia and Montenegro* v. *France)* (request for the indication of provisional measures, 1999, and on preliminary objections, 2004); *Certain Criminal Proceedings in France (Republic of the Congo* v. *France)* (request for the indication of provisional measures, 2003); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (request for an Advisory Opinion) (written statement of the French Republic, 30 January 2004); European Court of Human Rights; Court of Justice of the European Communities; International arbitral tribunals: Tribunal formed by France and the United Nations Educational, Scientific and Cultural Organization (UNESCO) in the case concerning the tax regime applicable to pensions paid to retired UNESCO officers residing in France, award issued on 14 January 2003; Tribunal formed by the Kingdom of the Netherlands and the French Republic in the case concerning the final settlement of accounts pursuant to the additional protocol to the Convention concerning the Protection of the Rhine against Chlorides Pollution, award issued on 12 March 2004.

Member and Chair of the Committee of Experts of the Council of Europe for the Improvement of Procedures for the Protection of Human Rights (Member 1986-1998; Chairman 1987-1989). Chair of the Joint Consultative Committee of the Organisation for Economic Co-operation and Development (1994-1998).

Member of the French delegation to the General Assembly of the United Nations (1998-2004). Head of the French delegation to the Sixth Committee of the General Assembly (1998-2004).

Head of the French delegation to the Assembly of States Parties to the Rome Statute of the International Criminal Court (2002, 2003, 2004). Head of the French delegation in the Working Group on Jurisdictional Immunities of States and Their Property (2004). Head of the French delegation to the Central Commission for the Navigation of the Rhine (1998-2005). Chairman of the Commission (2002-2003).

Member of the Board of the Société française pour le droit international. Member of the European Group of Public Law. Member of the Board of Editors of the *Annuaire français de droit international*.

Publications: *Droit international, droit communautaire et droit français*, 1989; "Les magistrats des tribunaux administratifs et des cours administratives d'appel", *Revue française de droit administratif* (*RFDA*), 1988, March-April, No. 2; "Compétence des juridictions internes pour interpréter un traité international", *Actualité juridique droit administratif*, September 1990; *Revue générale de droit international public*, 1990; "L'applicabilité directe de la Convention européenne des droits de l'homme devant la juridiction administrative", *Revue universelle des droits de l'homme*, 1991, September, Vols. 7-9; "Les incidences de la Convention européenne des droits de l'homme sur le droit constitutionnel et administratif des Etats parties", *Revue universelle des droits de l'homme*, 1992, Vols. 10-11; "Commentary on Articles 25 and 46 of the European Convention on Human Rights", in *La Convention européenne des droits de l'homme*, L. E. Pettiti, E. Decaux and P. H. Imbert, eds.; "La réforme du mécanisme de contrôle de la Convention européenne des droits de l'homme; le Protocole No. 11 à la Convention", *Annuaire français de droit international*, 1994; "Les principes généraux de la protection juridictionnelle administrative en Europe: l'influence des jurisprudences européennes", *Revue européenne de droit public*, Vol. 9, No. 3, Autumn 1997; "La notion d'effet direct des traités internationaux devant le Conseil d'Etat", *Recueil Dalloz*, 1998, jurisprudence; "Les normes du droit communautaire et du droit international devant le juge administratif français", presented at the Symposium of the Société française pour le droit international, held at Bordeaux, ed. Paris, Pedone, 2000; "Les procédures incidentes devant la Cour internationale de Justice", presented at a workshop of the School of Law of the University of Rennes I, ed. Paris, Pedone, 2001; "La France devant les juridictions européennes", *Pouvoirs*, 2001, No. 96; "Le rôle du jurisconsulte au Ministère des affaires étrangères", presented at the symposium of the Société française pour le droit international held at Geneva, ed. Paris, Pedone, 2004; "Le principe du contradictoire devant les juridictions internationales", presented at the symposium organized by the University of Paris I, ed. Pedone, 2004; "Droit des immunités et exigences du procès équitable", presented at a symposium organized by the University of Paris XII, ed. Paris, Pedone, 2004.

"La Cour internationale de Justice, juge constitutionnel?", in *La Charte des Nations Unies, Constitution mondiale?*, symposium organized by the

University of Paris X, ed. Paris, Pedone, 2006; "L'application des traités internationaux et l'office du juge des référés administratifs", *Mélanges Labetoulle*, ed. Dalloz, 2007; "L'articulation du droit interne et du droit international", *La France et le droit international*, Cahin, Poirat, Szurek (dir.), ed. Paris, Pedone, 2007.

Numerous "conclusions" (opinions) in the Conseil d'Etat published in *Actualité juridique, droit administratif*, *Revue française de droit administratif*, *Revue générale de droit international public* and *Revue critique de droit international privé*.

Judge Kenneth KEITH

(Member of the Court since 6 February 2006)

Born in Auckland, New Zealand, on 19 November 1937.

Knight Commander of the Order of the British Empire for services to legal education and law reform, Order of New Zealand.

Studied law (1956-1965), University of Auckland, Victoria University of Wellington and Harvard Law School, qualifying for LL.B. and LL.M. Degrees; Honorary LL.D. Degrees, University of Auckland 2001 and Victoria University of Wellington 2004.

Barrister and Solicitor of the High Court of New Zealand (1961); Queen's Counsel (1994).

Faculty Member, Victoria University of Wellington (1962-1964, 1966-1991); Dean (1977-1981); now Professor Emeritus; also Visiting Professor at Osgoode Hall Law School, Toronto (1981-1982).

Member of the Legal Division, New Zealand Department of External Affairs (1960-1962); Member of the Office of Legal Affairs (Codification Division) of the United Nations (1968-1970), primarily undertaking research for the International Law Commission and working with the Sixth Committee of the General Assembly, including the Committee on Friendly Relations; student intern in that division (1965); Member of the New Zealand Law Commission (1986-1996), President (1991-1996).

Judge of the New Zealand Court of Appeal (1996-2003), and of the newly established Supreme Court of New Zealand (2004-2006); at various times Judge of Appeal in Samoa, the Cook Islands, Niue and Fiji; Member of the Judicial Committee of the Privy Council, London.

Member of the New Zealand legal team in the *Nuclear Tests* cases before the International Court of Justice 1973, 1974 and 1995; leader of the New Zealand delegation to two of the sessions of the Diplomatic Conference which prepared the 1977 additional protocols to the Geneva Conventions; Member of the New Zealand National Group of the Permanent Court of Arbitration (1985-2007); Member of the Panel of Arbitrators of the International Centre for Settlement of Investment Disputes (since 1994); President (2002-2006) and Member (1991-2006) of the International Humanitarian Fact-Finding Commission under the first additional Protocol to the Geneva Conventions for the Protection of War Victims; Member of the international arbitral tribunals in the *Rainbow Warrior (New Zealand v. France)* (1990) and *Southern Bluefin Tuna (Australia and New Zealand v. Japan)* (2000) cases; and Chair of NAFTA, ICSID and other international tribunals.

Named lectures include Cook Memorial (New Zealand Bankers' Association), Sir John Marshall Memorial (Wellington District Law Society), F. W. Guest Memorial (University of Otago), Brainerd Currie Memorial (Duke University), Harkness Henry (University of Waikato), Frank Stuart Dethbridge Memorial (Maritime Law Association of Australia and New Zealand) and Sir David Williams (University of Cambridge).

Member of the Board of Editors of the *Public Law Review* (Melbourne), *New Zealand Law Review* (Auckland), *Commonwealth Law Bulletin* (London), *Oxford University Commonwealth Law Journal*, *New Zealand Journal of Public and International Law* (Wellington) and *New Zealand Yearbook of International Law*.

President of the New Zealand Institute of International Affairs (2000-2007); Counsellor of Honour and International Humanitarian Law Consultant, New Zealand Red Cross; Member of the Public and Administrative Law Reform Committee (1972-1986), the Committee on Official Information (1978-1980), the Royal Commission on the Electoral System (1985-1986) and the Legislation Advisory Committee (1986-1996); and Member (2003-) and *associé* (1997-2003) of the Institut de droit international.

Member, American Law Institute; Honorary Member, Society of Legal Scholars (England); Honorary Bencher of the Inner Temple; Fellow, Legal Research Foundation (New Zealand); Member, American Society of International Law; British Institute of International and Comparative Law; Australian and New Zealand Society of International Law; International Institute of Strategic Studies; International Law Association.

Publications on international law include: "New Zealand Treaty Practice: The Executive and the Legislature", *New Zealand Universities Law Review*, Vol. 1, 1964; "International Law and New Zealand Municipal Law", in J. F. Northey (ed.), *A. G. Davis Essays in Law*, 1965; "Succession to Bilateral Treaties by Seceding States", *American Journal of International Law*, Vol. 61, 1967; "The Role of Law in the United Nations", *Victoria University of Wellington Law Review*, Vol. 4, 1967; *The Extent of the Advisory Jurisdiction of the International Court of Justice*, 1971; *Defence Perspectives: Papers Read at the 1972 Otago Foreign Policy School*, 1972, editor and introduction; "Land and Sea Frontier Problems in South-East Asia", in Hedley Bull (ed.), *Asia and the Western Pacific: Towards a New International Order*, 1975; "The Nuclear Tests Cases after Ten Years", *Victoria University of Wellington Law Review*, Vol. 14, 1983; "A New Zealand Perspective on Globalisation", in Alston and Chiam (eds.), *Treaty-Making and Australia — Globalisation versus Sovereignty?*, 1995; "The Advisory Jurisdiction of the International Court of Justice: Some Comparative Reflections", *Australian Year Book* *of International Law*, Vol. 17, 1996; "Application of International Human Rights Law in New Zealand", *Texas International Law Journal*, Vol. 32, 1997 (also published in *Developing Human Rights Jurisprudence — Judicial Colloquium in Georgetown, Guyana, 3-5 September 1996*, Vol. 7, 1998); "The Impact of International Law on New Zealand Law", (Harkness Henry Lecture) *Waikato Law Review*, Vol. 6, 1998; "The International Law Commission's Work and the Shaping of International Law", in *Proceedings of the United Nations Colloquium on Progressive Development and Codification of International Law*, 1998; "Roles of the Courts in New Zealand in Giving Effect to International Human Rights — With Some History": Seminar Commemorating the 50th Anniversary of the Universal Declaration of Human Rights, *Victoria University of Wellington Law Review*, Vol. 29, 1999, and *New Zealand Association for Comparative Law Yearbook*, Vol. 4, 1998; "Rights and Responsibilities: Protecting the Victims of Armed Conflict", *Duke Law Journal*, Vol. 48, 1999; "Freedom of Information and International Law", in Jack Beatson and Yvonne Cripps (eds.), *Freedom of Expression and Freedom of Information: Essays in Honour of Sir David Williams*, 2000; "Piracy and Other Perils: Can the Law Cope?", *Journal of Maritime Law Association of Australia and New Zealand*, Vol. 16, 2002; "Sovereignty at the Beginning of the 21st Century: Fundamental or Outmoded?", *Camb Law Journal*, Vol. 63, 2004; "Protecting Human Rights in a Time of Terror: The Role of National and International Law", *Waikato Law Review*, Vol. 13, 2005; "The World Community and its Law", *New Zealand Universities Law Review*, Vol. 22, 2006; "Member of the Permanent Court of Arbitration", in C. Saunders and T. McCormick (eds.), *Sir Ninian Stephen: A Tribute*, Miergunya Press, 2007; "The ICJ — Some Reflections on My First Year", *New Zealand Journal of Public and International Law*, Vol. 5, 2008; "The International Court of Justice — *Primus Inter Pares?*", *International Organizations Law Review*, Vol. 5, 2008; *Interpreting Treaties, Statutes and Contracts*, 2009; "Resolving International Disputes: The Role of Courts", *New Zealand Yearbook of International Law*, Vol. 7, 2009, p. 255; "International Court of Justice: Some Reflections on the Electoral Process", *Chinese Journal of International Law*, Vol. 9 (1), 2010, p. 49; "The International Court of Justice and Criminal Justice", *International and Comparative Law Quarterly*, Vol. 59, 2010, p. 895; "Thomas Buergenthal: Judge of the International Court of Justice (2000-2010)", *Leiden JIL*, Vol. 24, 2011, p. 163; "Bilateralism and Community in Treaty Law and Practice — of Warriors, Workers and (Hook-) Worms" in Ulrich Fastenrath and others (eds.), *From Bilateralism to Community Interest: Essays in Honour of Bruno Simma*, 2011, Chap. 46, "'Naval Secrets', Public Interest Immunity and Open Justice" in Bannelier *et al.* (eds.), *The ICJ and the Evolution of International Law: The Enduring Impact of the Corfu Channel Case*, Routledge, 2012; "International Law 1960-2010: Now and Then", *Victoria University of Wellington Law Review*, Vol. 43, 2012.

Other publications concern constitutional law, administrative law, the review and reform of the law and legal education. They include *Essays on Human Rights*, (ed.) and chapter on "The Right to Protest", 1968; *International Implications of Race Relations in New Zealand*, 1972; "Race Relations and the Law in New Zealand", *Human Rights Journal*, Vol. 6, 1973; "The Impact of American Ideas on New Zealand's Educational Policy, Practice and Theory: The Case of Law", *Victoria University of Wellington Law Review*, Vol. 18, 1988 (also in David Philips and Others (eds.): *The Impact of American Ideas on New Zealand's Educational Policy, Practice and Thinking*, 1989; "Lawyers and the Rule of Law: Lawyers in the Law Reform Process", in *10th Commonwealth Law Conference, Nicosia, Cyprus: Conference Papers*, 1993; "Governance, Sovereignty and Globalisation: Fifth Biennial Conference on the New Zealand Council of Trade Unions" *Victoria University of Wellington Law Review*, Vol. 28, 1998, p. 477; "Introductory Essay: Public Law in New Zealand", *New Zealand Journal of Public and International Law*, Vol. 1, 2003; "Administrative Law Developments in New Zealand as Seen Through Immigration Law", in G. Huscroft and M. Taggart (eds.), *Inside and Outside Canadian Administrative Law: Essays in Honour of David Mullan*, 2006; "New Zealand's Constitution — Is it Brilliant or Odd?" in Sir Geoffrey Palmer (ed.), *Reflections on the New Zealand Law Commission*, 2007; "The Interplay with the Judicial Committee of the Privy Council", *The Judicial House of Lords* (Dir Publ., Louis Blom-Cooper *et al.*), 2009.

Judge Mohamed Bennouna

(Member of the Court since 6 February 2006)

Born in Marrakesh, Morocco, on 29 April 1943.

Doctor of International Law, Professor of International Law. Diploma from the Hague Academy of International Law. Member of the Institute of International Law.

Professional activities: Ambassador, Permanent Representative of the Kingdom of Morocco to the United Nations (2001-2006). Judge *ad hoc* at the International Court of Justice in the case concerning *Frontier Dispute (Benin/Niger)* (2002-2005). Judge of the International Criminal Tribunal for the former Yugoslavia, The Hague (1998-2001). Director General of the Arab World Institute (Institut du monde arabe, Paris) (1991-1998). Ambassador, Deputy Permanent Representative of Morocco to the United Nations (1985-1989). Professor and later Dean of the Faculty of Law in Rabat (Morocco) (1972-1984). Founder and first Director of the *Revue juridique, politique et économique du Maroc* (1976). Visiting Professor at various universities: Tunis, Algiers, Nice, New York, Thessaloniki, Paris.

Chairman of the Sixth Committee (Legal Matters) at the Fifty-Ninth

Session of the General Assembly of the United Nations. Chairman of G77 and China at the United Nations (2003). Member of the UNESCO World Commission on the Ethics of Scientific Knowledge and Technology (COMEST) (2002-2006). Member of the UNESCO International Bioethics Committee (1992-1998) and of the UNESCO International Panel on Democracy and Development (1997-2002). Chairman of a panel of the United Nations Compensation Commission, Geneva (1992-1995). Member of the United Nations International Law Commission, Geneva (1986-1998). First Special Rapporteur of the International Law Commission on the question of diplomatic protection (1997-1998). Legal counsel to the Moroccan delegation at numerous sessions of the United Nations General Assembly (1974-1985). Member of the Moroccan delegation at the United Nations Conference on the Law of the Sea (1974-1982).

Author of numerous books, essays and articles on international law: *Le consentement à l'ingérence militaire dans les conflits internes*, Librairie générale de droit et de jurisprudence, 1974; "Le droit international relatif aux matières premières", *Recueil des cours*, Hague Academy of International Law, Vol. 177, 1982; *Le droit international du développement*, Berger-Levrault, 1983; *La spécificité du Maghreb arabe*, Fondation du roi Abdul Aziz, 1990; "Les sanctions économiques des Nations Unies", *Recueil des cours*, Hague Academy of International Law, Vol. 300, 2002. "Le Maghreb entre le mythe et la réalité", revue *Intégration*, 1974, No. 1; "Les fonds marins entre l'héritage commun et la querelle des héritiers", *Revue iranienne des relations internationales*, 1975, No. 5; "Le Sahara occidental devant la Cour internationale de Justice", *Revue juridique, politique et économique du Maroc (RJPEM)*, 1976, No. 1; "Le nouvel ordre économique international et la doctrine juridique", *RJPEM*, 1977, No. 2; "Le Maroc et le droit de la mer", *RJPEM*, 1979, No. 6; "Les droits d'exploitation des ressources minérales des océans", *Revue générale de droit international public*, 1980, No. 1; "L'admission d'un nouveau membre à l'Organisation de l'unité africaine", *Annuaire français de droit international (AFDI)*, 1980; "The Outer Limit of the Continental Shelf", *The Management of Humanity's Resources: The Law of the Sea*, Martinus Nijhoff, 1982; "Réalité et imaginaire en droit international du développement", *Le droit des peuples à disposer d'eux-mêmes: Miscellanies presented to Charles Chaumont*, Pedone, 1984; "Défi du développement et volontarisme normatif", *La formation des normes en droit international du développement*, CNRS, 1984; "Le caractère pluridimensionnel du droit de la mer", in R.-J. Dupuy and D. Vignes (eds.), *Traité du nouveau droit de la mer*, Economica, 1985; "La zone économique exclusive marocaine", *Le Parlement et la pratique législative au Maroc*, Editions Toubkal, 1985; "L'Islam et les relations internationales", *Renouveau des études sur l'Islam et le monde arabe*, Fondation du roi Abdul Aziz, 1987; "La délimitation des espaces maritimes en Méditerranée", *The Law and the Sea: Essays in Memory of J. Carroz*, FAO Publications, 1987; "La Convention des Nations Unies relative aux droits de l'enfant", *AFDI*, 1989; "La création

d'une juridiction pénale internationale et la souveraineté des Etats”, *AFDI*, 1990; “Quelle sécurité pour quelle Méditerranée?”, *La Méditerranée en question – Conflits et interdépendances*, CNRS, 1991; “International Law and Development”, in M. Bedjaoui (General Editor), *International Law: Achievements and Prospects*, UNESCO-Martinus Nijhoff, 1991; “L'après-guerre froide et les nouveaux enjeux des relations internationales”, *Les Nations Unies*, Publications de l'Académie du Royaume du Maroc, 1991; “La dimension géopolitique du Maroc méditerranéen”, *Le Maroc méditerranéen*, Editions Le Fennec, 1992; “L'obligation juridique dans le monde de l'après-guerre froide”, *AFDI*, 1993; “Le règlement des différends peut-il limiter le droit de se faire justice à soi-même?”, *Journal européen de droit international*, 1994, Vol. 5, No. 1; “The United Nations, Guarantor of International Peace and Security”, *The United Nations at Age Fifty – A Legal Perspective*, C. Tomuschat (ed.), Kluwer Law International, 1995; “La protection diplomatique, un droit de l'Etat?”, *Boutros-Ghali Amicorum Discipulorumque Liber*, Bruylant, 1998; “Droit international et diversité culturelle”, *International Law at the Turn of the Century*, Sakkoulas Publications, 1998; “L'embargo dans la pratique des Nations Unies – Radioscopie d'un moyen de pression”, *Liber Amicorum Mohammed Bedjaoui*, Yakpo and I. Boumedra (eds.), Kluwer Law International, 1999; “La Cour pénale internationale”, *Le droit international pénal*, H. Ascensio, E. Decaux and A. Pellet (eds.), Pedone, 2000; “The Characterisation of the Armed Conflict in the Practice of the ICTY”, *Essays on ICTY Procedure and Evidence in Honour of G. K. McDonald*, R. May *et al.* (eds.), Kluwer Law International, 2001; “The Statute's Rules on Crimes and Existing or Developing International Law”, *The Rome Statute of the International Criminal Court: A Commentary*, Vol. II, A. Cassese, P. Gaeta and J. Jones (eds.), Oxford, 2002; “Should the United Nations be Changed?”, *The Global Community Yearbook of International Law and Jurisprudence*, Vol. I, 2004; “Les effectivités concurrentes dans le règlement des contentieux territoriaux”, *Droit international et coopération internationale, Hommage à J.-A. Touscoz*, France Europe Editions, 2007; “Réflexions sur la régulation internationale du risque – A propos du concept de prévention”, *Terres du droit*, Mélanges en l'honneur de Y. Jegouzo, Paris, ed. Dalloz, 2009; “La protection diplomatique: du standard minimum de traitement des étrangers aux droits de l'homme”, *The Diversity of International Law: Essays in Honour of Professor Kalliopi K. Koufa*, Martinus Nijhoff, 2009; “La stabilité des frontières maritimes entre états”, *L'évolution et l'état actuel du droit international de la mer: Mélanges de droit de la mer offerts à D. Vignes*, Bruylant, 2009; “Le formalisme juridique, pour quoi faire?”, in *Le formalisme juridique dans le droit international du XXI$^{\text{ème}}$ siècle, L'Observateur des Nations Unies*, Vol. 30, 2011-1; “Le rôle de la Cour internationale de Justice dans la protection de l'environnement”, in *International Conference on Global Environmental Governance: Rome – Ministry of Foreign Affairs, 20-21 May 2010*, Rome, Istituto Superiore per la protezione e la ricerca

ambientale (ISPRA), 2011; "How to Cope with the Proliferation of International Courts and Co-ordinate Their Action", in A. Cassese (ed.), *Realizing Utopia: The Future of International Law*, Oxford University Press, 2012; "L'avis sur le Kosovo et la fonction consultative de la CIJ", in K. Kherad (ed.), *Les déclarations unilatérales d'indépendance*, Paris, Pedone, 2012; "The *Corfu Channel* Case and the Concept of Sovereignty" in K. Bannelier, T. Christakis and S. Heathcote (eds.), *The ICJ and the Evolution of the International Law: The Enduring Impact of the* Corfu Channel *Case*, New York, Routledge, 2012; "La Cour pénale international", in H. Ascensio, E. Decaux and A. Pellet (eds.), *Le droit international penal – Deuxième édition révisée*, Paris, Pedone, 2012; "La Cour pénale internationale et les Etats", in J. Fernandez and X. Pacreau (eds), *Statut de Rome de la Cour pénale internationale: commentaire article par article*, Vol. 1, Paris, Pedone, 2012; "Article 10", in J. Fernandez and X. Pacreau (eds.), *Statut de Rome de la Cour pénale internationale: commentaire article par article*, Vol. 1, Paris, Pedone, 2012; "De la reconnaissance d'un 'droit à la nationalité' en droit international", *Société française pour le droit international (SFDI), Droit international et nationalité: colloque de Poitiers*, Paris, Pedone, 2012.

Awards: National Prize for culture (Morocco); Medal for culture (Yemen); and Knight of the National Order of the Legion of Honour (France).

Judge Leonid SKOTNIKOV

(Member of the Court since 6 February 2006)

Born in Kalinin, USSR, on 26 March 1951.

Diploma in International Law: Moscow Institute of International Relations (1974). Fellow, Center for International Affairs, Harvard University (1990).

Officer (legal issues), Consular Department, Ministry of Foreign Affairs of the USSR (1974-1977). Officer (United Nations General Assembly Third and Sixth Committees matters), Permanent Mission of the USSR to the United Nations (1977-1981). Officer (human rights issues) (1981-1986), then Head of Division (general problems of international law, co-operation in countering new threats and challenges) (1987-1991), Legal Department, Ministry of Foreign Affairs of the USSR. Director (1991-1992), Legal Department, Ministry of Foreign Affairs of the Russian Federation (1991-1992). Ambassador Extraordinary and Plenipotentiary of the Russian Federation to the Kingdom of the Netherlands (1992-1998). Director, Legal Department, Member of the Collegium, Ministry of Foreign Affairs of the Russian Federation (1998-2001). Ambassador, Permanent Representative of the Russian Federation to the United Nations Office and other International Organizations in Geneva, as well as to the Conference on Disarmament (2001-2005).

Participation in major international forums and negotiations.

Member of the delegation of the USSR to the negotiations on bilateral consular conventions between the Government of the USSR and the Governments of the People's Democratic Republic of Algeria, the Republic of Benin, the Republic of Cape Verde, the Republic of Mali, the Republic of Tunisia, the Republic of Turkey (1976-1977).

Representative of the USSR, the United Nations General Assembly Intersessional Working Group to elaborate an international convention on the protection of the rights of all migrant workers and their families (1979-1981).

Representative of the USSR in the United Nations General Assembly 37th Session Working Group on Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture, and other cruel, inhuman or degrading treatment or punishment (1982).

Member of the delegation of the USSR to the Third Committee, United Nations General Assembly, Thirty-Seventh Session (1982).

Member of the delegation of the USSR to the session of the United Nations Economic and Social Council (ECOSOC) (1983).

Representative of the USSR, the United Nations Seminar on the Encouragement of Understanding, Tolerance and Respect in Matters relating to Freedom of Religion or Belief (Geneva) (1984).

Member of the delegation of the USSR, Meeting of Experts on Questions concerning Respect, in Their States, for Human Rights and Fundamental Freedoms, in all Their Aspects, as embodied in the Final Act, CSCE (Ottawa) (1985).

Member of the delegation of the USSR to the session of the United Nations Commission on Human Rights (1986).

Member of the delegation of the USSR to the Sixth Committee, United Nations General Assembly, Forty-Second to Forty-Fourth Sessions (1987-1989).

Member of the Russian delegation to the meetings of Heads of States and Governments of the Commonwealth of Independent States (Alma-Ata, 1991; Minsk, 1991; Moscow, 1992; Minsk, 1992; Kiev, 1992).

Deputy Head of the Russian delegation to the Second Session of the Conference of States Parties of the Organisation for the Prohibition of Chemical Weapons (1997).

Member of the Administrative Council of the Permanent Court of Arbitration (1992-1998).

Member of the Permanent Court of Arbitration Steering Committee established by the Secretary-General pursuant to the authorization of the PCA Administrative Council with the purpose to assist the International Bureau and the Administrative Council in preparing for the centenary of the PCA, by making recommendations concerning revision of the Hague conventions and improvement of the PCA's dispute settlement mechanisms (1994-1998).

Head of the Russian delegation to the negotiations with the Governments of the Republic of Iceland and the Kingdom of Norway on the trilateral agreement concerning certain aspects of co-operation in the area of fisheries (1999).

Representative of Russia, "Ministerial on Ice", Antarctica (1999).

Co-Chairman of the Russian-United States Working Group on Law Enforcement (1999).

Member of the Russian delegation to the United Nations General Assembly, Fifty-Third to Fifty-Fifth Sessions; Representative of Russia in the Sixth Committee (1998-2000).

Representative of Russia in the *Ad Hoc* Committee of Legal Advisers on Public International Law (CAHDI), Council of Europe. Participated in the 16th, 17th, 19th and 20th CAHDI meetings (Paris, 1998; Vienna, 1999; Berlin, 2000; Strasbourg, 2001).

Chairman of the XXIV Antarctic Treaty Consultative Meeting, St. Petersburg (2001).

Head of the Russian delegation to the Forum on Afghan Refugees and Displaced Populations (Geneva) (2001).

Head of the Russian delegation to the Second Review Conference of the States Parties to the Convention on Prohibition or Restrictions on the Use of Certain Conventional Weapons which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (Geneva) (2001).

Head of the Russian delegation to the negotiations with the Kingdom of Norway on the delimitation of exclusive economic zones and continental shelf in the Barents Sea (1992, 1998-2002).

Head of the Russian delegation to the Fifth Review Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (Geneva) (2001-2002).

Head of the Russian delegation to the Third and Fourth Annual Conferences of the States Parties to the Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (Geneva) (2001-2002).

Head of the Russian delegation to the Annual Meeting of the States Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (Geneva) (2002).

Member, Board of Trustees of the United Nations Institute for Training and Research (UNITAR) (2002-2005).

Member of the Russian delegation to the World Summit on Information Society (WSIS) (Geneva) (2003).

Deputy Head of the Russian delegation to the Substantive Annual Session of the United Nations Economic and Social Council (ECOSOC) (2003).

Head of the Russian delegation to the 28th International Conference of the Red Cross and Red Crescent (2003).

Head of the Russian delegation to the One-Hundred-and-Eleventh Session of the Executive Board of the World Health Organization (2003).

Government delegate of Russia to the Ninety-Second Session of the International Labour Conference (2004).

Representative of Russia in the First Committee, United Nations General Assembly, Fifty-Ninth Session (2004).

Acting Head of the Russian delegation to the Fifty-Eighth, Fifty-Ninth, Sixtieth and Sixty-First Sessions of the United Nations Commission on Human Rights (2002-2005).

Scholarly, research and expert activities: participated as a panellist in the Conference "Transatlantic Storms? US-European Relations after European Monetary Union (EMU)", held by the Weatherhead Center for International Affairs, Harvard University (Talloires, France) (1998); took part in the preparation and the work of the meetings dedicated to the Centennial of the First International Peace Conference (The Hague and St. Petersburg) (1999); participated in the international conference "Entering the XXI Century: Primacy of Law in International Relations" (Moscow) (2000). Member of the Foundation Council of the Geneva Centre for Security Policy (2002-2005). Participated in the International Workshop on Article 51 of the United Nations Charter in Light of Future Threats to International Peace and Security organized by the Government of Switzerland as a contribution to the work of the High-Level Panel on Threats, Challenges and Change (Geneva) (2004). Took part as a panellist in the ninety-ninth meeting of the American Society of International Law (Washington, D.C.) (2005).

Author of a number of publications on international law, including: "The Right of Self-Defence and the New Security Imperatives", *International Affairs*, No. 9, 2004 (in Russian) and No. 6, Vol. 50, 2004 (in English); "The Use of Force: Legal Aspects", *International Affairs*, No. 11, 2003 (in Russian); "Entering the 21st Century: Towards the Rule of Law in International Relations", *International Affairs*, No. 12, 2000 (in Russian) and No. 1, Vol. 47, 2001 (in English); "The Primacy of Law in Politics", (co-author), *International Affairs*, No. 4, 1989 (in Russian) and No. 5, Vol. 35, 1989 (in English).

Decorations: Order of Friendship (2002), Decree of Commendation by the President of the Russian Federation (2004).

Judge Antônio Augusto Cançado Trindade

(Member of the Court since 6 February 2009)

Born in Belo Horizonte, Brazil, on 17 September 1947.

Ph.D. in International Law (1977), University of Cambridge, United Kingdom, with thesis on "Developments in the Rule of Exhaustion of Local Remedies in International Law" (awarded the Yorke Prize).

LL.M. in International Law, University of Cambridge (1973); LL.B. in Law, Federal University of Minas Gerais, Brazil (First Prize in Civil Law, 1969).

Professor (Full Professor/*Professeur titulaire*) of Public International Law at the University of Brasilia (since 1978) and at the Diplomatic Academy Rio Branco of Brazil (since 1979).

Emeritus Professor of International Law of the University of Brasilia, Brazil (2010). Honorary Professor of International Law (Chair in International Tribunals), Utrecht University (2010). Honorary Fellow University of Cambridge (Sidney Sussex College, 2011).

Lecturer at the Hague Academy of International Law, 2005 session (general course on Public International Law, published in Vols. 316 and 317 (2005) of the Hague Academy's *Recueil des cours*); Lecturer at the Hague Academy of International Law, 1987 session (course published in Vol. 202 (1987) of the Hague Academy's *Recueil des cours*); Lecturer at the twentieth external session of the Hague Academy of International Law (Bogotá, 1989); Lecturer at the twenty-first external session of the Hague Academy of International Law (Santiago de Chile, 1991); Lecturer at the twenty-fourth external session of the Hague Academy of International Law (San José, Costa Rica, 1995); Lecturer at the twenty-seventh external session of the Hague Academy of International Law (Montevideo, 1998); Lecturer at the thirtieth external session of the Hague Academy of International Law (Mexico City, 2002); Lecturer at the thirty-third external session of the Hague Academy of International Law (Lima, 2005); Lecturer at the thirty-sixth external session of the Hague Academy of International Law (Santo Domingo, Dominican Republic, 2008); Lecturer at the thirty-eighth external session of the Hague Academy of International Law (Santiago de Chile, 2011); Co-sponsor, as Judge of the Inter-American Law Court of Human Rights and Executive Director of the Inter-American Institute of Human Rights, of the twenty-fourth external session of the Hague Academy of International Law (San José, Costa Rica, 1995). Participant in the 1974 session of the Research Centre of the Hague Academy of International Law (certificate awarded).

Lecturer at the annual courses of International Law organized by the OAS Inter-American Juridical Committee (Rio de Janeiro, sessions of 1981, 1982, 1985, 1990, 1991, 1992, 1995, 1996, 1997, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011 and 2012.)

Lecturer at the annual study sessions of the International Institute of Human Rights (Strasbourg, France, sessions of 1988, 1991, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011 and 2012). Holder (*titulaire*) of the Chair "Fondation Roi Baudouin" at the International Institute of Human Rights (René Cassin Institute) in Strasbourg.

Lecturer at the Academy of European Law of the European University Institute in Florence (general course on International Human Rights Law, 2007 session, published in the Oxford University Press Series in 2011).

Lecturer at the Interdisciplinary Courses of the Inter-American Institute of Human Rights (sessions of 1986, 1989, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2004 and 2007); Academic Co-ordinator of specialized courses and seminars of the Inter-American Institute of Human Rights, in Costa Rica and Brazil; Lecturer at the Inter-American Institute of Human Rights in several countries.

Visiting Professor ("Cátedra Simón Bolivar") at the University of Los Andes (Mérida, Venezuela, 1981 and 1982); Visiting Professor at the University of Milan (1982); Visiting Professor at the Institut des hautes études internationales, University Panthéon-Sorbonne (Paris II), 1988-1989 sessions; Visiting Professor at the University of Ferrara, Italy (1983 and 1986); Visiting Professor (elected by the Congregation) of the University of Lisbon (1993); Visiting Professor at Columbia University (1998); Visiting Professor at Tulane Law School, Tulane University, New Orleans (1999); Visiting Professor at the Universities of Seville (2002 and 2010) and Deusto (Bilbao, Spain) (2002); Visiting Professor at Washington College of Law, American University (May/June 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011 and 2012); Visiting Professor at the Autonomous University of Madrid (U.A.M.)/Foundation Ortega y Gasset (2006 onwards).

Visiting Professor at the University of Notre Dame (2005); Visiting Professor at the University of Paris I, Panthéon-Sorbonne (2007); Visiting Professor at the Catholic University of Milan (2009); Visiting Professor at the University of Oslo (2010); Visiting Professor at the University of País Vasco, San Sebastián (2010); Visiting Professor at the University of La Plata, Argentina (2011).

Yorke Prize, awarded by the Faculty of Law of the University of Cambridge, United Kingdom (1978), for the author's Ph.D. thesis in International Law (best Ph.D. thesis presented in the period 1977-1978); Honours, International Institute of Human Rights, Strasbourg, France (1988); Honours, Inter-American Institute of Human Rights, San José, Costa Rica (1997); Honours, State University of Rio de Janeiro, Brazil (1999); University of Brasilia, Brazil (1999); Federal University of Minas Gerais, Brazil (2002); Professor *honoris causa*, Universidad Nacional Mayor de San Marcos, Lima, Peru (2001); Doctor *honoris causa*, Central University of Chile, Santiago, Chile (2003); Doctor *honoris causa*, Catholic University of Peru, Lima, Peru (2003); Prize "Isidro Fabela", National Autonomous University of Mexico (UNAM), Mexico City, Mexico (2003); Doctor *honoris causa*, American University of Paraguay, Asunción, Paraguay, (2004); Prize "Pontes de Miranda", Brazilian Academy of Judicial Letters (2004); Doctor *honoris causa*, National University of La Plata, La Plata, Argentina (2005); Honorary Visiting Professor, University of Rosario, Bogotá, Colombia (2005); Annual Award of 2007 of the American Society of International Law (ASIL), Washington D.C., (2007); "W. Friedmann Memorial Award", Columbia University, New York, (2008); Jurist of the Centenary of Hélder Câmara, Belo Horizonte, Brazil (2009).

President of the Inter-American Court of Human Rights (elected 1999, re-elected 2002); Vice-President of the Inter-American Court of Human Rights (elected 1997); Judge of the Inter-American Court of Human Rights (elected 1995, re-elected by acclamation 2000); former judge *ad hoc* of the Inter-American Court of Human Rights (two cases, 1990-1994). Executive Director of the Inter-American Institute of Human Rights (elected unanimously, 1994-1996).

Member of the Board of Directors of the Inter-American Institute of Human Rights (elected 1988-1991, re-elected unanimously 1991-1994, re-elected unanimously 1996 at the end of term as Executive Director); External Legal Adviser to the Inter-American Institute of Human Rights (1991-1994); delegate of the Inter-American Institute of Human Rights to the regional meeting of Latin America and the Caribbean preparatory to the United Nations World Conference on Human Rights (1993) and to other "satellite meetings" for the Second United Nations World Conference on Human Rights (Vienna, 1993); Head of the delegation of the Inter-American Institete of Human Rights to the Central American Conference on Peace and Development (Tegucigalpa, 1994).

Legal Adviser to the Ministry of External Relations of Brazil (1985-1990); Deputy Head of the delegation of Brazil to the United Nations Conference on the Law of Treaties between States and International Organizations (Vienna, 1986); Delegate of Brazil to the Second World Conference on Human Rights (Vienna, 1993); Special Envoy of the Minister of External Relations of Brazil to Chile for Questions Pertaining to Human Rights (Santiago, 1993-1994); Delegate of Brazil to the twenty-fourth General Assembly of OAS (Belém do Pará, Brazil, 1994); Delegate of Brazil to the fourteenth General Assembly of OAS (Brasilia, 1984); Delegate of Brazil to the Conferences on the Latin American Parliament (Cartagena and Lima, 1987); Delegate of Brazil to the Joint Meeting of the Contadora Group and the Group of Support (Cartagena, 1985); Head of the delegation of Brazil to the United Nations Conference on the Code of Conduct for Transfer of Technology (Geneva, 1983); Legal Adviser to the delegation of Brazil to the Sixth Conference of the Brazilian-French Mixed Commission of Demarcation of Limits (1981).

Expert of the United Nations and Lecturer in the United Nations Global Consultation on the right to development as a human right (Geneva, 1990); Member of the Group of Senior Legal Advisers to UNEP (Nairobi, 1990-1992), participant of the meetings in Malta (1990), Nairobi (January and September 1991), Geneva (March and July 1991), Beijing (1991), Rio de Janeiro (1991-1992), Nairobi (September 1992); Member of the Advisory Committee of Experts in International Environmental Law of the United Nations University (1984-1987), participant at the meetings at The Hague (1984), Rio de Janeiro (1985), Strasbourg (1986), Goa, India (1987).

UNDP Adviser for advisory project on modernization of the Foreign Offices of Latin American countries (Chile, Brazil, Dominican Republic, Mexico, Guatemala (1988)); UNEP Adviser for the elaboration of environmental legislation project of São Tomé and Príncipe (1992);

Member of the Group of Jurists of the *Comisión Sudamericana de Paz*, entrusted with the elaboration of the first draft of the Treaty of Zone of Peace in South America (Brasilia, August 1989, and Montevideo, June 1990).

Member of the Commission of Jurists of OAS for Nicaragua (1993-1994). Member of the Commission of Senior Legal Advisers to the Office of the United Nations High Commissioner for Refugees (UNHCR) for the final evaluation of the process of the International Conference on Central American Refugees (Mexico City, 1994); Legal Adviser to the Council of Europe in the case concerning the 1995 Minsk Convention on Human Rights (1995). Legal Adviser to the UNHCR for the consultations on the 10th and 20th anniversaries of the Cartagena Declaration on Refugees (1994-2004).

Member of the Commission of Advisers to UNESCO on the Right to Peace as a Human Right (participant at meetings in Las Palmas, Spain, February 1997, and Oslo, Norway, June 1997). Research supervisor for the project on humanitarian law and customary law, International Committee of the Red Cross (1997).

Arbitrator, International Centre for Settlement of Investment Disputes (2006-2008).

Director of the *Brazilian Journal of International Law* (published every semester; Director since 1985); Co-Director of the *Brazilian Journal of Human Rights* (since 2001). Brazilian editor of *International Legal Materials* (Washington/American Society of International Law, since 1981); Member of the *Arquivos* Review Editorial Council, Ministry of Justice of Brazil (1987-2002); Member of the Editorial Board of the *Brazilian Journal of International Politics* (since 1993); Member of the Editorial Board of "International Newsletter" of the University of São Paulo, Brazil (since 1997).

Member of the Curatorium of the Hague Academy of International Law (since 2004); Member of the Institute of International Law (since 1997); Elected Member of the Committee on the Enforcement of Human Rights Law of the International Law Association (London). Elected Member of the International Council of Environmental Law (Bonn).

Member of the Boards of Directors (elected and re-elected) of the Inter-American Institute of Human Rights and of the International Institute of Human Rights (San José and Strasbourg); Elected Member of the International Institute of Humanitarian Law (San Remo).

Permanent Member of the Brazilian Society of International Law; Associate Member of the Asociación Argentina de Derecho Internacional; Elected Member of the Société française pour le droit international; Permanent Member (elected, 1994), and former rapporteur (1996), of the Instituto Hispano-Luso-Americano de Derecho Internacional; Member of the American Society of International Law; Member of the British Institute of International and Comparative Law and of the Indian Society of International Law; Member of the Association des anciens auditeurs of the Hague Academy of International Law.

Member of the Advisory Board of the Asia-Pacific Council on Human Rights Studies (New Delhi, 1998); Member of the International Council on Human Rights Policy (London, 1997); Member of the Steering Committee of the Project on International Courts and Tribunals (New York/The Hague, 1998-2001).

Honorary President of the Brazilian Institute of Human Rights; Member of the Brazilian Bar Association; "Professor Homenageado" (elected by the students) of the University of Brasilia, "Professor Homenageado" (elected by the students in successive years) of the Catholic University of Minas Gerais, Brazil (2002) and of the Tuiuti University of Curitiba, Brazil (2002); "Professor Homenageado" of the Diplomatic Academy Rio Branco (1999 and 2006).

Member of the *Academia Mineira de Letras Jurídicas*; Member of the *Academia Brasileira de Letras Jurídicas*.

Author of 48 books and 650 articles and monographs on international law, published in numerous countries and in several languages.

Judge Abdulqawi Ahmed YUSUF

(Member of the Court since 6 February 2009)

Born in Eyl, Somalia, 12 September 1948.

Docteur ès sciences politiques (International Law), Graduate Institute of International Studies, University of Geneva (1980). *Laurea di Dottore in Giurisprudenza* (Dr. Juris), Faculty of Law, Somali National University (1973). Certificate, Centre for Studies and Research in International Law, Hague Academy of International Law (1974). Studies and research in International Law and Relations, University of Florence, Italy (1976-1977).

Judge *ad hoc* at the International Court of Justice in the case concerning *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, from March 2007 to June 2008.

Legal Adviser and Director of the Office of International Standards and Legal Affairs, UNESCO (March 2001-January 2009). Assistant Director-General and Special Adviser on African Affairs, UNIDO (March 1998-February 2001); Acting Managing Director, Country Programmes and Funds Mobilization Division, UNIDO (August 1997-March 1998); Legal Adviser and Director of the Legal Service, UNIDO (August 1994-March 1998). Representative and Head, New York Office of UNCTAD (July 1992-July 1994); Senior Liaison Officer, United Nations Programme of Action for the Least Developed Countries, UNCTAD, New York (1992-1994); Head, Legal Policies Section, Trade and Technology Programme, UNCTAD, Geneva (July 1988-June 1992); Legal Officer, Technology Division, UNCTAD, Geneva (December 1981-June 1988); Liaison Officer in the Office of the Special Representative of the Secretary-General and Adviser to the Commander of the United

Nations peacekeeping forces, UNTAG, Namibia (May-June 1989); Deputy Regional Director and Electoral Supervisor (Ovambo, Namibia) (August-December 1989).

Somali representative to the Third United Nations Conference on the Law of the Sea (1975-1981). Somali delegate to the Afro-Asian Legal Consultative Committee (1975 and 1976). Member, Somali delegation to OAU Summit conferences (1974). Barrister, Supreme Court of Somalia, since 1974.

Expert Adviser, UNCTAD negotiations on a Draft International Code of Conduct on the Transfer of Technology (1982-1985). Expert Adviser at the United Nations negotiations on a Convention on Biological Diversity (1990-1991). Expert Adviser and UNCTAD Representative at the GATT Uruguay Round Trade Negotiations on TRIPS (1989-1991). Legal Adviser to the Industrial Development Board and General Conference of UNIDO (1994-1998). Legal Adviser to the International Centre for Genetic Engineering and Biotechnology (Trieste, Italy) (1994-1997). Legal Adviser to the Executive Board and General Conference of UNESCO (since 2001). Legal Adviser to the UNESCO Intergovernmental Oceanographic Commission and to the World Heritage Committee (since 2001). Legal Adviser to UNESCO negotiations on the following conventions: Convention on the Protection of the Underwater Cultural Heritage, Convention for the Safeguarding of Intangible Cultural Heritage, International Convention against Doping in Sport, Convention on the Protection and Promotion of the Diversity of Cultural Expression (2001-2006).

Lecturer, International Law, Faculty of Law, Somali National University (1974-1980) and Head, Public Law Department (1976-1978). Assistant Professor, Faculté de droit, Université de Genève (1981-1983). Visiting lecturer on public international law and international economic law at the following universities and academic institutions: University of Siena, Italy, March and April 1984; Institut universitaire d'études du développement, Geneva (Switzerland), February and March 1984; University of Florence (Italy), March and April 1985; University of Milan-Bocconi (Italy), April 1990; International Development Law Institute, Rome (Italy), May 1990, May 1991, May 1992 and October 1995; University of Turin (Italy), June 1991 and June 1992; UNITAR Fellowship Programme in International Law, the Hague Academy of International Law (Netherlands), 1993, 1994, 1996 and 1999; Thessaloniki Institute of Public International Law and International Relations, 2004; United Nations Regional Courses in International Law, since 2011; The Hague Academy of International Law, 2012.

Founder and General Editor, *African Yearbook of International Law/Annuaire africain de droit international*. Member of the Academic Council of the Doctoral School of International Law, University of Paris I (Sorbonne), France. Founder, African Institute of International Law, Arusha, Tanzania. Member of the International Curatorium of the Thessaloniki Institute of Public International Law and International Relations, Greece. Member, Editorial Advisory Board, *Asian Yearbook of International Law*.

Member, Institute of International Law (Institut de droit international), Geneva. Founding Member, African Association of International Law. Founding Member and Member of Governing Board, African Foundation for International Law. Member, Commission on Environmental Law, IUCN (World Conservation Union). Member, Société française de droit international.

Author of a number of books and numerous articles dealing with various aspects of international law, including the following:

Books: *Legal Aspects of Trade Preferences for Developing States: A Study in the Influence of Development Needs on the Evolution of International Law*, 1982; *Intellectual Property and International Trade: The TRIPS Agreement* (ed. with C. Correa), first edition, Kluwer Law International, 1998, second edition, Walters Kluwer-Law & Business, 2007; *International Technology Transfer: The Origin and Aftermath of the Draft UN Code of Conduct* (ed. with S. J. Patel and P. Roffe), Kluwer Law International, 2000; *Standard-Setting in UNESCO/L'action normative à l'UNESCO* (ed.), UNESCO and Martinus Nijhoff, 2007, English and French editions; *The African Union: Legal and Institutional Framework: A Manual on the Pan-African Organization* (ed.) English edition, Martinus Nijhoff, 2012, (French forthcoming 2013); *African Yearbook of International Law/Annuaire Africain de droit international* (Founder and General Editor), Vols. I-XVII, (published every year since 1993), Kluwer Law International and Martinus Nijhoff, English and French editions.

Articles and Special Papers: "The legal status of mercenaries in the law of armed conflict", in A. Cassese (ed.), *The New Humanitarian Law of Armed Conflicts*, 1979; "Towards a new legal framework for marine research: Coastal state consent and international co-ordination", *Virginia Journal of International Law*, Vol. 19, No. 2, 1979; "Preferential treatment as a dimension of the right to development" in R.-J. Dupuy (ed.), *The Right to Development at the International Level*, Hague Academy of International Law, 1980; "Differential and More Favourable Treatment of Developing Countries in International Trade: The GATT Enabling Clause", *Journal of World Trade Law*, 1981; "L'élaboration d'un code international de conduite pour le transfert de technologie: bilan et perspectives", *Revue générale de droit international public*, No. 4, 1984; "The legal framework for stable, remunerative and equitable commodity prices in international trade", in D. Dicke and E.-U. Petersmann (eds.), *Foreign Trade in the Present and a New International Economic Order*, 1988; "Trade-related aspects of intellectual property rights", *Uruguay Round: Papers on Selected Issues*, 1989; "Transfer of technology" in

M. Bedjaoui (ed.), *International Law: Achievements and Prospects*, 1992; "Intellectual Property Protection and International Trade: The Exhaustion of Rights Revisited", *World Competition*, Vol. 16, No. 1, 1992 (in collaboration); "Technology and Genetic Resources in the Biodiversity Convention: Is Mutually Beneficial Access Still Possible?" in *Biodiplomacy: Genetic Resources and International Relations* (V. Sanchez and C. Juma, eds.), 1994; "International Law and Sustainable Development: The Convention on Biological Diversity", *African Yearbook of International Law*, Vol. II, 1994; "Reflections on the Fragility of State Institutions in Africa", *African Yearbook of International Law*, Vol. II, 1994; "Intellectual Property Protection in the Countries of Africa", *International Journal of Technology Management*, Vol. 10, 1995; "The Role of the Legal Adviser in the Reform and Restructuring of an International Organization: The Case of UNIDO", *Collection of Essays by Legal Advisers of States, Legal Advisers of International Organizations and Practitioners in the Field of International Law*, 1999; "Developing Countries and the Multilateral Trade Rules: The Continuing Quest for an Equitable Playing Field", *Liber Amicorum for Prof. Georges Abi-Saab*, 2001; "Government Collapse and State Continuity: The Case of Somalia", *Italian Yearbook of International Law*, Vol. XIII, 2003; "The Right of Intervention by the African Union: A New Paradigm in Regional Enforcement Action", *African Yearbook of International Law*, Vol. 11, 2003; "Le Conseiller juridique d'une organisation internationale face a la pratique", Societe française de droit international, *La pratique et le droit international*, colloque de Genève 2003, 2004; "The UNESCO Declarations on Bioethics: Emerging Principles and Standards of an International Biolaw", N. Boschiero (ed.), *Bioetica e Biotechnologie nel Diritto Internazionale e Communitario*, 2006; "Cultural Rights As Collective Rights in International Law", *Thesaurus Acroasium*, Vol. XXXV, 2007, pp. 49-72; "UNESCO Standard-Setting Activities on Bioethics: Speak Softly and Carry a Big Stick", F. Francioni (ed.), *Biotechnologies and International Human Rights*, 2007; "La coordination des actions dans le système des Nations Unies", R. Chemain and A. Pellet (eds.), *La Charte des Nations Unies, Constitution mondiale?*, 2007; "La Nozione Di 'Beni Culturali Sotto Protezione Rafforzata' E Il Ruolo Dei Comitati Dell'Unesco Per La Protezione Del Patrimonio Culturale", *La Tutela Internationale Dei Beni Culturali Nei Conflitti Armati, a cura di Paolo Benvenuti e Rosario Sapienza*, 2007; "The Notion of 'Armed Attack' in the Nicaragua Judgment and Its Influence on Subsequent Case Law" *Leiden Journal of International Law*, June 2012, Vol. 25; "The Role that Equal Rights and Self-Determination of Peoples Can Play in the Current World Community" in A. Cassese (ed.), *Realizing Utopia: The Future of International Law*, Oxford University Press, 2012.

Judge Christopher GREENWOOD

(Member of the Court since 6 February 2009)

Born in Wellingborough, United Kingdom, on 12 May 1955.

Appointed Companion of the Order of St. Michael and St. George (2002) and Knight Bachelor (2009) for services to public international law.

Educated at Raeburn Park School, Singapore; Wellingborough School, Northamptonshire, and Magdalene College, University of Cambridge. B.A. (Law) 1976; LL.B. (International Law) 1977; M.A. 1980. McNair Scholar 1976; Whewell Scholar 1977.

Barrister, Middle Temple (1978). Queen's Counsel (1999). Bencher, Middle Temple (2003).

Taught public international law, European community law and English law at Cambridge (1977-1996). Fellow of Magdalene College, University of Cambridge (1978-1996); Honorary Fellow (since 2009). Assistant Lecturer, Faculty of Law, University of Cambridge (1981-1984); Lecturer (1984-1996). Honorary Fellow, Lauterpacht Centre for International Law (since 2009).

Professor of Public International Law, London School of Economics (1996-2009); Head of the Law Department (2004-2006).

Vice-President, British Institute of International and Comparative Law; Member, Editorial Committee, *British Year Book of International Law*; Member, American Society of International Law, Asian Society of International Law, European Society of International Law, International Law Association; Honorary Member, Society of Legal Scholars.

Barrister, practising international law in the English courts and before international courts and tribunals (1985-2009).

Counsel in the following cases before the International Court of Justice: *Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*; advisory proceedings relating to *Nuclear Weapons* cases; *Legality of Use of Force (Serbia and Montenegro v. United Kingdom)*; *Armed Activities on the Territory of the Congo* and *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of Congo v. Rwanda)*; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*.

Counsel before the European Court of Human Rights, the Court of Justice of the European Communities, the International Criminal Tribunal for the former Yugoslavia, the United Nations Compensation Commission and various international arbitration tribunals.

Appearances as counsel before other courts and tribunals include: *Bankovic and Others v. Belgium and Others* (European Court of Human Rights), *Kadi* and *Yusuf* (Court of Justice of the European Communities), *Barbados v. Trinidad and Tobago* (arbitration), *Guyana v. Suriname* (arbitration), *Bayindir v. Pakistan* (arbitration).

Appearances as counsel before the English courts include: *R. v. Bow Street Magistrates' Court*, Ex parte *Pinochet* (House of Lords), *Kuwait Airways Corporation v. Iraqi Airways Co.* (House of Lords), *Jones v. Saudi Arabia* (House of Lords), *R. (Al-Skeini) v. Secretary of State* (House of Lords), *R. (Al-Jedda) v. Secretary of State* (House of Lords).

Arbitrator in *Corn Products Inc.* v. *Mexico* (President); *Larsen* v. *Hawaiian Kingdom*; *Azpetrol Ltd.* v. *Azerbaijan*; *European Media Ventures* v. *Czech Republic* and other cases.

Publications include the *International Law Reports*, Vols. 51-144 (joint editor, Vols. 82-144); *Essays on the Laws of War* (2006); *Command and the Law of Armed Conflict* (1993).

Author of more than one hundred articles published in legal reviews, notably: "State Contracts in International Law", *British Year Book of International Law*, Vol. 58, 1982, pp. 27-81; "The Relationship of *Ius ad Bellum* and *Ius in Bello*", *Review of International Studies*, Vol. 9, 1983, pp. 221-234; "The Concept of War in Modern International Law", *International and Comparative Law Quarterly*, Vol. 36, 1987, pp. 283-306; "Self-Defence and the Conduct of International Armed Conflict", in Y. Dinstein (ed.), *International Law at a Time of Perplexity*, Kluwer Academic Publishers, 1989, pp. 273-288; "Twilight of the Law of Belligerent Reprisals", *Netherlands Yearbook of International Law*, Vol. 20, 1989, pp. 35-69; "Terrorism and Protocol I", *Israel Yearbook of Human Rights*, Vol. 19, 1989, pp. 187-208 "The Administration of Occupied Territory in International Law", in E. Playfair (ed.), *International Law and the Administration of Occupied Territories*, Oxford University Press, 1992, pp. 241-266; "The Customary Law Status of the 1977 Additional Protocols", in A. Delissen and G. Tanja (eds.), *Humanitarian Law of Armed Conflicts*, Dordrecht, Martinus Nijhoff, 1991, pp. 93-114; "New World Order or Old? The Invasion of Kuwait and the Rule of Law", *Modern Law Review*, Vol. 55, 1992, pp. 153-178; Chapters 1 and 2 in D. Fleck (ed.), *Handbuch des Humanitaren Volkerrechts in bewaffneten Konflikten*, 1994, pp. 1-55; published in English as D. Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts*, Oxford, 1995, 2nd edition, 2008; "Considerations of International Law" (with Hugh Mercer) in B. Eichengreen and R. Portes (eds.), *Crisis? What Crisis? Orderly Workouts for Sovereign Debtors*, 1995, pp. 103-117; "The United Nations as Guarantor of International Peace and Security 1945-1995: A United Kingdom View", in C. Tomuschat (ed.), *The United Nations at Age Fifty: A Legal Perspective*, 1996, pp. 59-76; "The International Court and the Use of Force", in A. V. Lowe and M. Fitzmaurice (eds.), *Fifty Years of the International Court of Justice*, 1996, pp. 373-388; "International Humanitarian Law and the *Tadic* Case", *European Journal of International Law*, Vol. 7, 1996, pp. 265-283; "Protection of Peacekeepers: The Legal Regime", *Duke Journal of International Law*, Vol. 7, 1996, pp. 185-207; "The Advisory Opinion on Nuclear Weapons and the Contribution of the International Court to International Humanitarian Law", *International Review of the Red Cross*, Vol. 37, 1997, pp. 65-75; "A Critique of the Protocols" (on the 1977 Additional Protocols to the Geneva Conventions), in Durham and McCormack (eds.), *The Changing Face of Conflict and the Efficacy of International Law*, Kluwer, 1999, pp. 3-22; "The Development of International Humanitarian Law by the International Criminal Tribunal for the former Yugoslavia", *Max Planck Yearbook of United Nations Law*, Vol. 2, 1998, pp. 97-140; "International Humanitarian Law and United Nations Military Operations", *Yearbook of International Humanitarian Law*, Vol. 1, 1998, pp. 3-34; "The Law of Weaponry at the Start of the New Millennium", in L. C. Green and M. Schmitt (eds.), *Into the Millennium: The Law of Armed Conflict*, US Naval War College, 1999, pp. 185-232; "Rights at the Frontier: Protecting the Individual in Time of War", in Barry A. K. Rider (ed.), *Law at the Centre*, 1999, the 50th Anniversary Lectures of the Institute of Advanced Legal Studies, Kluwer Law International, pp. 277-293; Report on International Humanitarian Law published under commission from the Netherlands Government as part of the Centenary of the First Hague Peace Conference, published in F. Kalshoven (ed.), *The Centennial of the First International Peace Conference*, Kluwer Law International, 2000, pp. 161-259; "War, Terrorism and International Law", *Current Legal Problems 2003*, Oxford University Press, pp. 505-530; "The Law of Armed Conflict", chapter in M. Evans (ed.), *International Law*, Oxford University Press, 2003 and 2007; "Command Responsibility and the *Hadzihasanovic* Decision", *Journal of International Criminal Justice*, Vol. 2, 2004, pp. 598-605; "State Responsibility for the Decisions of National Courts", in Fitzmaurice and Sarooshi (eds.), *Issues of State Responsibility before International Judicial Institutions*, 2004, pp. 55-74; Chapter on the United Kingdom in Gowlland-Debbas (ed.), *National Implementation of United Nations Sanctions*, 2004, pp. 581-604; "Human Rights and Humanitarian Law: Conflict or Convergence?", *Case Western Reserve Journal of International Law*, Vol. 43, 2010, pp. 491-512.

Judge Xue HANQIN

(Member of the Court since 29 June 2010)

Born in Shanghai, China, on 15 September 1955.

B.A., Beijing Foreign Language Studies University (1980); Diploma of International Law, Beijing University, Department of Law (1982); LL.M., Columbia University School of Law (1983); J.S.D., Columbia University School of Law (1995).

Professor at Wuhan University School of Law. Vice-President and Board Member, Chinese Society of International Law. Vice-President Chinese Society of Private International Law. Associate, Institut de droit international (2005). Member, Institut de droit international (since 2009). President, Asian Society of International Law. Member of the Curatorium of the Hague Academy of International Law (since 2010).

Entered the Foreign Ministry of China (1980). Deputy Director-General, Department of Treaty and Law, Ministry of Foreign Affairs (1994-1999). Director General, Department of Treaty and Law, Ministry of Foreign Affairs (1999-2003). Ambassador of China to the Kingdom of the Netherlands, and Permanent Representative of China to the Organisation for the Prohibition of Chemical Weapons (2003-2008). Ambassador to ASEAN, Legal Counsel of the Ministry, Ministry of Foreign Affairs of China (2008-2010). Member of the International Law

Commission (elected in 2001 and re-elected in 2006 by the United Nations General Assembly for the term 2007-2011). Chairman of the International Law Commission (2010).

Member of the Chinese delegation, United Nations Special Committee on the Charter and the Strengthening of the Role of the Organization (1982, 1990, 1993). Member of the Chinese delegation, United Nations Committee on the Peaceful Uses of Outer Space and its Legal Sub-Committee (1980-1984). Delegation Legal Adviser, IAEA Legal Experts meeting on the drafting of the two conventions on early notification and emergency assistance (1986). Member of the Chinese delegation, Sixth Committee, United Nations General Assembly (1986-1987). Member of the Chinese delegation, ICAO Legal Committee meeting on the drafting of the Protocol for the Suppression of Unlawful Acts of Violence at International Airports, Supplementary to the Montreal Convention (1987-1988). Member of the Chinese delegation, Third Committee, United Nations General Assembly (1993). Legal expert, meeting of legal experts on the establishment of the International Tribunal for the former Yugoslavia (1993). Head of the Chinese delegation, experts meeting on the United Nations Convention on Jurisdictional Immunities of States and Their Property (1994). Head of the Chinese delegation, The Hague Conference on Private International Law, meeting on the question of the application of the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (1994). Head of the Chinese delegation, United Nations meeting on the protection of the safety of United Nations Personnel and Associated Personnel (1994). Head of the Chinese delegation, INCD meetings on United Nations Convention to Combat Desertification (1995). Head of the Chinese delegation, Framework Convention on Climate Change meeting, Berlin Mandate (1996). Deputy Head of the Chinese delegation presenting a national report on implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (1996). Member of the Chinese delegation, The Hague Conference on Private International Law, meeting on the recognition and enforcement of foreign judgments (1998). Head of the Chinese delegation, legal experts meeting on the drafting of the United Nations Convention against Transnational Organized Crime (1998-1999). Deputy Head of the Chinese delegation, presenting a national report on implementation of the Convention on the Elimination of All Forms of Discrimination against Women (1999). Chairperson, Informal Advisory Group on the Admission of the European Community to The Hague Conference (2004). Vice-Chairperson, twentieth session of The Hague Conference of Private International Law (2005).

Head of the Chinese delegation, negotiation with the British Government on legal matters relating to Hong Kong, particularly matters regarding the continued application of international conventions and treaties as well as special arrangements of bilateral agreements in certain fields after 1997. Head of the Chinese delegation, negotiation and conclusion with a number of States of treaties on judicial assistance in civil and criminal matters, and of treaties on extradition. Chief Negotiator, negotiations with the Bank for International Settlements on the Host Country Agreement on the Establishment of the Branch Office of the Bank in the Hong Kong Special Administrative Region. Head of the Chinese delegation, negotiations with the Portuguese Government on legal matters relating to Macao, especially with regard to the legal arrangement of the continued application of international conventions and agreements after 1999. Chief Negotiator, negotiations with the United States on property damages arising from the United States bombing of the Chinese Embassy in Yugoslavia. Head of the Chinese delegation working group on delimitation of the maritime boundaries of territorial sea, exclusive economic zone and continental shelf of Beibu Gulf between China and Viet Nam.

Publications on international law include *International Law*, Wang Tieya, ed., Beijing, Law Press, 1995; *A Complete Compilation of Treaties on Trade and Economy between China and Foreign Countries* (co-editor), Beijing, Xinhua Publishing House, 1996; *Commentary on the Charter of the United Nations* (co-editor), Shanxi Publishing House, 1999; *International Law*, Shao Jin, ed., Beijing, Beijing University Press and Higher Education Press, 2000 ("State Responsibility" chapter); *Transboundary Damage in International Law*, Cambridge University Press, 2003; *National Treaty Law and Practice*, Duncan B. Hollis, Merritt R. Blakeslee and L. Benjamin Ederington, eds., London/Boston, Martinus Nijhoff Publishers, 2005 (Chapter 5 on China).

Author of numerous articles on various subjects on international law, amongst which "On Outer Space Law Issues" (co-author), in *Studies of International Affairs*, Vol. 4, 1983; "The Twenty-Third Session of the Legal Sub-Committee of the Outer Space Committee", *Chinese Yearbook of International Law*, 1985; "A Comparative Study of the Legal Regimes of the 'Common Resources'", *Chinese Yearbook of International Law*, 1986; "Commentary on the Two Nuclear Safety Conventions", *Chinese Yearbook of International Law*, 1987; "International Law Issues in the Kokaryo Case", in *Chinese Yearbook of International Law*, 1988; "Relativity in International Water Law", *Colorado Journal of International Environmental Law and Policy*, Vol. 3, No. 1, 1992; "Transboundary Damage in International Law", *Peace, Justice and Law: Collection of Essays in Commemoration of the 80th Anniversary of Professor Wang Tieya*, 1993; "The Role of the United Nations in the Development of International Law", *Chinese Yearbook of International Law*, 1995; "On Sustainable Development", in *Pacific Journal*, Vol. 4, 1997; "The Collective Concept in State Responsibility" (panel speech on State responsibility at the annual session of the American Society of International Law, 15 March 2002), *Proceedings of the 96th Annual Meeting of the American Society of International Law*, 2002; "The Fifty-Fourth Session of the International Law Commission", *Chinese Yearbook of International Law*, 2003; "What Has Been Changed?" (a contribution to Agora: Is the Nature of the International Legal System Changing?), *Austrian Review of International and European Law*, Vol. 8, 2003; "The Fifty-Fifth Session of the International Law Commission", *Chinese Yearbook of International*

Law, 2004; "State Responsibility and *Erga omnes* Obligation", *Chinese Yearbook of International Law*, 2004; "China's Open Policy and International Law" (lecture initiated by the Institute of Social Studies, The Hague, September 2004), *Chinese Journal of International Law*, Vol. 4, No. 1, 2005; "The Fifty-Sixth Session of the International Law Commission", *Chinese Yearbook of International Law*, 2005; "The Fifty-Seventh Session of the International Law Commission", *Chinese Yearbook of International Law*, 2006; "Chinese Observations on International Law" (lecture delivered at the Grotius Centre for International Legal Studies on 1 November 2006), *Chinese Journal of International Law*, Vol. 6, No. 1, 2007; "Fragmented Law or Fragmented Order?" (speech at the Post-ILC Debate on Fragmentation of International Law Conference, 23-24 February 2007, Helsinki), *Finnish Yearbook of International Law*, Vol. XVII, 2006; "International Treaties in the Chinese Domestic Legal System", *Chinese Journal of International Law*, Vol. 8, No. 2, July 2009.

Judge Joan E. DONOGHUE

(Member of the Court since 9 September 2010)

Born in Yonkers, New York, United States of America, on 12 December 1956.

B.A. with Honors in Russian Studies, University of California, Santa Cruz; B.A. with Honors in Biology, 1978; Juris Doctor, Boalt Hall School of Law, University of California, Berkeley, 1981.

Prior Professional Experience: Principal Deputy Legal Adviser, United States Department of State (2007-2010); Adjunct Professor, George Washington University School of Law (2006); General Counsel and Corporate Secretary (2003-2005), Freddie Mac; Associate General Counsel, Legislative and Regulatory Affairs (2001-2003), Freddie Mac; Deputy Legal Adviser, United States Department of State (2000-2001); Deputy General Counsel, United States Department of the Treasury (1999-2000); Assistant Legal Adviser for Economic and Business Affairs (1994-1999), United States Department of State; Assistant Legal Adviser for African Affairs, United States Department of State (1993-1994); Council on Foreign Relations International Affairs Fellow and Visiting Professor, Boalt Hall School of Law, University of California Berkeley (1992); Adjunct Professor, Georgetown University School of Law (1991); Assistant Legal Adviser for Oceans and Environment (1984-1991),United States Department of State; Director, Office of Diplomatic Law and Litigation (1986-1989); Attorney Adviser, Latin American and Caribbean Affairs (1984-1986); Associate Attorney, Covington & Burling, Washington, D.C. (1981-1984).

Publications: Selected publications include "The Role of the World Court Today", 47 *Georgia L. Rev.* 181 (2012); "A Common Law of International Adjudication", by Chester Brown, 105 *AJIL* 612 (2011) (book review); "The Public Face of Private International Law: Prospects for a Convention on Foreign State Immunity", 57 *Law and Contemporary*

Problems 305 (1994); "International Law and Policy-Making about Global Change", in *The Ecological and Social Dimensions of Global Change* (David D. Caron, Terry Chapin, Joan Donoghue, Mary Firestone, John Harte and Lisa Wells, eds.), Institute of International Studies, University of California at Berkeley, 1994; *The International Politics of the Environment*, by Andrew Hurrell and Benedict Kingsbury, 88 *American Journal of International Law* 411 (1994) (book review); "EC Participation in the Protection of the Marine Environment", 17 *Marine Policy* 515 (1993); "Taking the 'Sovereign' out of the Foreign Sovereign Immunities Act: A Functional Approach to the Commercial Activities Exception", 17 *Yale Journal of International Law* 489 (1992); "The Trade Provisions of International Environmental Agreements: Can They Be Reconciled with the GATT?", 86 *American Society of International Law Proceedings* 233 (1992); "Perpetual Immunity for Foreign Diplomats? A Response to 'the Abisinito Affair: A Restrictive Theory of Diplomatic Immunity?'", 27 *Columbia Journal of Transnational Law* 615 (1989).

Other information: Contributor to UN training programs (recorded lectures on peaceful settlement of disputes for UN Audio-Visual Library (2012)). Active in outreach throughout the United States regarding the role of international law and of the International Court of Justice (audiences have included federal and state court judges; law students and faculty; chapters of the World Affairs Council; Model United Nations students; newspaper, television and radio interviews).

Counsellor, American Society of International Law, 2011-present; Counsellor, American Law Institute Restatement Fourth of Foreign Relations Law, 2012-present; International moot court judge (Jessup Moot Court world finals, 2012).

Honors include Distinguished Honor Award (highest award given by the Secretary of State) (2009); Presidential Rank Award (Meritorious Executive) (2009); Younger Federal Lawyer of the Year (1988).

Judge Giorgio GAJA

(Member of the Court since 6 February 2012)

Born in Lucerne, Switzerland, on 7 December 1939. Italian nationality.

Degree in Law, University of Rome (1960). *Libera docenza* in International Law (1968). Honorary Doctor of Law, Dickinson Law School (1985).

Professor of International Law, University of Florence (1974-2011), Dean of the Law School (1978-1981).

Lecturer, Hague Academy of International Law (1981 and 2011). Part-time Professor, European University Institute (1980 and 1984-1985). Visiting Professor, Johns Hopkins University (1977-1978), University of Geneva (1983 and 1985), University of Paris I (1989 and 2000), University of Aix-Marseille III (1992), University of Michigan School of Law (1992), Columbia Law School (1996), and Graduate Institute of International Studies (2001).

Member of the International Law Commission (1999-2011). Delegate of the Italian Government to the Vienna Conference on the Law of Treaties between States and International Organizations and between International Organizations (1986).

Counsel to the Italian Government in the *ELSI* case before the International Court of Justice. Judge *ad hoc* in the cases concerning *Legality of the Use of Force* (*Yugoslavia* v. *Italy*); *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea* (*Nicaragua* v. *Honduras*); *Territorial and Maritime Dispute* (*Nicaragua* v. *Colombia*); *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Georgia* v. *Russian Federation*); and *Jurisdictional Immunities of the State* (*Germany* v. *Italy: Greece intervening*).

Member of the Institut de droit international. Editor of the *Rivista di diritto internazionale*. Member of the Advisory Board of the *Common Market Law Review*, *European Journal of International Law* and *Columbia Journal of European Law*.

Principal publications: *L'esaurimento dei ricorsi interni nel diritto internazionale*, 1967; *La deroga alla giurisdizione italiana*, 1971; *International Commercial Arbitration. The New York Convention* (edited loose-leaf volumes), 1978 (updated); *Introduzione al diritto dell' Unione europea*, 2nd ed., 2012; "River Pollution in International Law", *Hague Academy of International Law Colloquium. The Protection of the Environment and International Law*, 1975; "Considerazioni sugli effetti delle sentenze di merito della Corte internazionale di giustizia", *Comunicazioni e studi*, Vol. XIV, 1975; "Reservations to Treaties and the Newly Independent States", *Italian Yearbook of International Law*, Vol. I, 1975; "The European Community's Participation in the Law of the Sea Convention: Some Incoherencies in a Compromise Solution", *Italian Yearbook of International Law*, Vol. 5, 1980-1981; "*Jus Cogens* beyond the Vienna Convention", Hague Academy of International Law, *Recueil des cours*, Vol. 172, 1981; "The European Community's Rights and Obligations under Mixed Agreements", *Mixed Agreements*, 1983; "Effets directs et réciprocité dans la jurisprudence concernant l'accord entre la Communauté européenne et la Suisse", *Annuaire suisse de droit international*, Vol. XL, 1984; "Instruments for Legal Integration in the European Community – A Review" (with P. Hay and R. D. Rotunda), *Integration through Law: Europe and the American Federal Experience*, 1986, Vol. I.2; "Principi generali del diritto (diritto internazionale)", *Enciclopedia del diritto*, Vol. XXXV, 1986; "Unruly Treaty Reservations", *International Law at the Time of Its Codification: Essays in Honour of Roberto Ago*, 1987, Vol. I; "Italy", *The Effect of Treaties in Domestic Law*, 1987; "A 'New' Vienna Convention on Treaties between States and International Organizations or between International Organizations: A Critical Commentary", *British Year Book of International Law*, Vol. 58, 1987; "Obligations *Erga Omnes*, International Crimes and *Jus Cogens*: A

Tentative Analysis of Three Related Concepts", *International Crimes of States*, 1989; "New Developments in a Continuing Story: The Relationship between EEC Law and Italian Law", *Common Market Law Review*, Vol. 27, 1990; "Measures against Terrorist Acts under International Law", *Maritime Terrorism and International Law*, 1990; "Positivism and Dualism in Dionisio Anzilotti", *European Journal of International Law*, Vol. 3, 1992; "Reflexions sur le rôle du Conseil de sécurité dans le nouvel ordre mondial. A propos des rapports entre maintien de la paix et crimes internationaux des Etats", *Revue générale de droit international public*, 1993; "La Convention européenne des droits de l'homme dans les ordres juridiques des Etats membres de la Communauté européenne", *Grundrechtsschutz im europäischen Raum*, 1993; "Beyond the Reasons Stated in Judgments", *Michigan Law Review*, Vol. 92, 1993-1994; "The Protection of Human Rights under the Maastricht Treaty", *Institutional Dynamics of European Integration. Essays in Honour of Henry G. Schermers*, 1994, Vol. II; "Use of Force Made or Authorized by the United Nations", *The United Nations at Age Fifty. A Legal Perspective*, 1995; "Some Reflections on the European Community's International Responsibility", *The Actions for Damages in Community Law*, 1997; "Identifying the Status of General Principles in European Community Law", *Scritti in onore di Giuseppe Federico Mancini*, Vol. II, 1998; "How Flexible Is Flexibility under the Amsterdam Treaty?", *Common Market Law Review*, Vol. 35, 1998; "Restraints Imposed by European Community Law on the Treaty-Making Power of the Member States", *Dealing with Integration*, Vol. 2, 1998; "Does the European Court of Human Rights Use Its Stated Methods of Interpretation?", *Studi in onore di Francesco Capotorti*, 1999; "Trattati internazionali", *Digesto delle discipline pubblicistiche*, Vol. XV, 1999; "New Instruments and Institutions for Enhancing the Protection of Human Rights in Europe?", *The EU and Human Rights*, 1999; "Expulsion of Aliens: Some Old and New Issues in International Law", *Cursos Euromediterráneos Bancaja de Derecho Internacional*, Vol. III, 1999; "Deliberating on Questions of Jurisdiction in the International Court of Justice", *Liber Amicorum Judge Shigeru Oda*, 2002; "The Long Journey towards Repressing Aggression", *The Rome Statute of the International Criminal Court. A Commentary*, 2002; "Obligations and Rights *Erga Omnes*: First Report; Second Report", *Yearbook of the Institute of International Law*, Vol. 71-I, 2005; "Relationship of the ICJ with other International Courts and Tribunals", *The Statute of the International Court of Justice: A Commentary*, 2006; "Convention de Vienne de 1969 – Article 38", *Les Conventions de Vienne sur le droit des traités: commentaires article par article*, 2006; "General Principles of Law", *Max Planck Encyclopedia of Public International Law*, 2012; "The Concept of an Injured State", *The Law of International Responsibility*, 2010; "A New Way for Submitting Observations on the Construction of Multilateral Treaties to the ICJ", *From Bilateralism to Community Interest. Essays in Honour of Bruno Simma*, 2011; "Accession to the ECHR", *EU Law after Lisbon*, 2012; "European Community and

Union Law and "Domestic (Municipal) Law", *Max Planck Encyclopedia of Public International Law*, 2012.

Judge Julia SEBUTINDE

(Member of the Court since 6 February 2012)

Born in Entebbe, Uganda, on 28 February 1954.

Doctorate of Laws, *honoris causa*, University of Edinburgh, United Kingdom, for distinguished service in the field of international justice and human rights (2009); Master of Laws Degree with Distinction (LL.M.), University of Edinburgh, United Kingdom (1990); Bachelor of Laws Degree (LL.B.) Makerere University, Uganda (1977); Post-Graduate Diploma in Legal Practice, Law Development Centre, Uganda (1978); Certificate in Legislative Drafting, University of Colombo, Sri Lanka in conjunction with the Commonwealth Fund for Technical Co-operation (CFTC) (1983); Certificate in Advanced Leadership Studies, Haggai Leadership Institute, Singapore (1998); Certificate in Alternate Dispute Resolution (ADR) Skills, National Judicial College, University of Nevada, Reno, United States (1997).

Previous judicial and legal positions: Judge of the Special Court for Sierra Leone (SCSL) (2005-2011); Presiding Judge of Trial Chamber II of the SCSL (2007-2008, 2010-2011), handling several high-profile war crime trials including the *Prosecutor v. Charles Ghankay Taylor*; Judge of the High Court of Uganda with original and appellate jurisdiction in civil and criminal cases (1996-2011); Chairperson, Judicial Commission of Inquiry into Corruption in the Uganda Police Force (1999-2000); Chairperson, Judicial Commission of Inquiry into Mismanagement in the Uganda People's Defence Forces (2001); Chairperson, Judicial Commission of Inquiry into Corruption in the Uganda Revenue Authority (URA) (2002); Chairperson, Technology Planning Committee of the Uganda Judiciary (1998-2002); Legislative Consultant seconded by the Commonwealth Secretariat to the Republic of Namibia responsible for amendment and replacement of the country's apartheid laws and training of Namibian legislative drafters (1991-1996); Principal State Attorney and Principal Parliamentary Counsel, Ministry of Justice, Uganda (1978-1990) and Legislative Consultant on the multilateral committees responsible for drafting and amendment of the treaties establishing the Common Market for Eastern and Southern African States (COMESA) and the Inter-Governmental Authority on Drought and Development (IGADD) (1980-1990); Member of the Uganda Bar and Advocate of the Courts of Judicature of Uganda since 1979.

Previous academic positions: Trainer and resource person on the International Civilian Peacekeeping and Peacebuilding Training Programme (IPT) of the Austrian Centre for Peace and Conflict Resolution, Stadtschlaining, Austria (2008-2011); Member of the Advisory Board of the Research Centre on International Criminal Law and Justice, University of Copenhagen (2011); Lecturer/Trainer at the

International Law Institute of Uganda (ILI) under the auspices of the State University of New York (SUNY) (1997-2004); Trainer and resource person for the Jurisprudence of Equality Project for East Africa in conjunction with the International Association of Women Judges (IAWJ), responsible for training of East African judges, magistrates and paralegals in the implementation of regional and international human rights instruments (1997-2004); Trainer and resource person at the post-graduate bar course, Law Development Centre of Uganda (1980-1990).

Other positions/honours: Chancellor of the International Health Sciences University (IHSU), Uganda (2008-2011); Member, Commonwealth Association of Legislative Drafters (1980-2011); Goodwill Ambassador for the United Nations Population Fund (UNFPA) (1996-2011); Member, National Association of Uganda Women Judges (NAUWJ) (1996-2011); Member, International Association of Women Judges (IAWJ) (1996-2011); Member, Advocates International (AI) (1980-2011); Represented Uganda Women at the opening of the United Nations Decade for Women in Addis Ababa, Ethiopia (1975); Chairperson, Board of Directors of the Acid Survivor's Association of Uganda (2000-2004); Recipient of the "Good Samaritan Award" by the Congress of Advocates International (2004); the Lifetime Achievement Award of the Uganda-British Alumni Association (UBAA) (2006) and a special award of the Uganda Law Society in recognition of her "courageous and exemplary contribution to the promotion of Justice in Uganda" (2001); Honouree of the American Biographical Institute in their seventh edition of "Who's Who of the Professionals 2000"; Named one of "Top 100 Africans of the Year" in the *Africa Almanac 2000*.

Author of various papers including: *International Criminal Justice: Balancing Competing Interests: The Challenges Facing Defence Counsel and Counsel for Victims and Witnesses*, Keynote Address at the Eighth ICC Seminar of Counsel, The Hague (May 2010); *Security Sector Reform: Transnational Justice Instruments: A Chance for Women*, Stadtschlaining, Austria (November 2010); *Celebrating Ten Years of the Rome Statute: Does Uganda Have Reason to Join the Party?*, Abu-Mayanja Memorial Lecture, Kampala, Uganda (September 2008); *The Importance of Outreach When Trials for War Crimes and Crimes against Humanity Are Conducted Away from the Country Where the Crimes Were Committed*, Institute for War Reporting, The Hague Chapter (April 2008); *Making Violence against Women Accountable: Case Study of Sierra Leone and Uganda*: Stadtschlaining, Austria (October 2008); *Advancing the Rule of Law in 21st Century Africa*, lecture given at the Fourth Global Convocation of Advocates International in Virginia, United States (November 2004); *Worth Your Salt: Combating Corruption*, lecture given at the South African Christian Leaders Conference in Pretoria, South Africa (July 2003).

Judge Dalveer BHANDARI

(Member of the Court since 27 April 2012)

Born in Jodhpur, India on 1 October 1947.

Graduated in humanities (1966) and law (1968) from Jodhpur University. Master in Law, Northwestern University, Chicago (1972). LL.D., Tumkur University, Karnataka (India) (2010).

More than 21 years of adjudication experience in the Indian higher judiciary. Senior Judge, Supreme Court of India (2005-2012).

Delivered a large number of judgments in the fields of public interest litigation, constitutional law, criminal law, civil law, administrative law, arbitration law, tax law, insurance and banking law, family law, human rights, child rights, educational rights, environmental law, land acquisition law, military law, inter-state disputes, labour law, service law, custom law, as well as mining law.

Keeping in view his landmark judgment in a divorce case, the Union of India is seriously considering his suggestion for amendment of the Hindu Marriage Act, 1955, by incorporating irretrievable breakdown of marriage as a ground for divorce. His various orders in the food-grains matter led to the release of a higher quantum of supply of food grains to the population living below the poverty line. His orders in the night-shelter matter led to state governments making provision for night shelters for homeless people all over the country. His orders in the matter of the right to free and compulsory education for children led to the availability of basic infrastructural amenities in primary and secondary schools all over the country.

Nominated as the Chairman of the Supreme Court Legal Services Committee by a notification issued by the Ministry of Law and Justice. Nominated as the Chairman of the Mediation and Conciliation Project Committee and supervised mediation and conciliation programmes all over the country. Chairman of the Selection Committee for appointing the Judicial and Administrative Members for the National Consumer Disputes Redressal Commission. Chairman of the Selection Committee for appointing the Chairman and Members of the Railway Claims Tribunal. Chairman of the Committee to consider cases of accreditation of legal correspondents in the Supreme Court of India. Chairman of the Committee for the selection of law clerk-cum-research assistants to be provided to the Chief Justice and other judges of the Supreme Court of India. Chairperson of the Committee for selecting the teaching faculty for the National Judicial Academy set up by the Supreme Court of India at Bhopal, Madhya Pradesh. Nominated as a Member of Third High-level Indo-Australian Legal Forum Meeting held on 9 and 10 November 2011 at New Delhi, which consisted of chief justices, judges and attorneys-general from India and Australia.

Chief Justice, High Court of Bombay, India (Maharashtra and Goa) (2004-2005).

Delivered a number of judgments in various branches of the law. His judgments and orders have led to a much larger allocation of funds for malnutrition in the five most backward districts of Maharashtra. By his judgment, 100 additional judicial officers were appointed to deal with the cases pertaining to Section 138 of the Negotiable Instruments Act, 1881.

During his tenure as the Chief Justice, the Bombay High Court achieved the distinction of functioning on a full strength of 60 judges for the first time and on his recommendation, the sanctioned strength of the Bombay High Court was increased from 60 to 75 judges. During his tenure a large number of new court buildings were set up in the states of Maharashtra and Goa. Other court buildings were renovated and modernized. On his persuasion, the state government agreed to set up the National Judicial Academy in the state of Maharashtra.

Instrumental in setting up mediation and conciliation centres all over the states of Maharashtra and Goa. Organized an International Conference on Mediation and Conciliation in Mumbai. Ensured better infrastructural facilities, particularly for the subordinate judiciary in the states of Maharashtra and Goa. Instrumental in setting up the Information Centre for Litigants in the Bombay High Court.

Judge, High-Court of Delhi (1991-2004). Delivered several landmark judgments in almost all branches of the law. His directions in public interest litigation led to the closure of a 100-year-old slaughterhouse and construction of a new, modernized and mechanized facility. His judgment on "John Doe" orders (intellectual property rights), namely *Taj Television Ltd. v. Rajan Mandal*, was published in a leading English Journal, *Fleet Street Reports* (2003), F.S.R. 407.

Chairperson of the Delhi High Court Legal Services Committee for several years. Chairperson of the Advisory Board of Delhi State on the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) and the National Security Act (NSA) for a number of years.

Practised in the Rajasthan High Court (India) (1968-1970 and 1973-1977). Worked at the Northwestern Legal Assistance Clinic and appeared in Chicago courts on behalf of Clinic litigants (1970-1972). From 1977, practised primarily in the Supreme Court of India on civil, criminal, constitutional, corporate, election and central excise branches of law, arguing many landmark cases before the Constitution Bench and other Benches of the Supreme Court of India. Arguing Counsel on the senior panel of the Union of India (1987-1991); Standing Counsel for the state of Uttar Pradesh and for many other public undertakings for more than a decade before the Supreme Court of India. Represented various other Indian states in the Supreme Court of India. Appeared in many leading high courts, such as the High Court of Delhi, the Bombay High Court, the Calcutta High Court, the Andhra Pradesh High Court, the Allahabad High Court, the Rajasthan High Court and the Punjab and Haryana High Court.

Executive member of the International Law Association, India Chapter (since 1994). Chair of the Delhi Centre of the International Law Association (2000-2004). Instrumental in the setting up the International Law Association Rajasthan Chapter at Jodhpur, Rajasthan. President of the India International Law Foundation (since 2007). Selected as one of the 16 most illustrious and distinguished alumni in the 150-year history of the Northwestern University School of Law, Chicago (2009). Honorary Life Member and Professor Emeritus, Indian Society of International Law (2012).

Academic and Teaching Achievements. As recipient of an international fellowship, visited Thailand, Malaysia, Indonesia, Singapore and Sri Lanka on an observational-cum-lecture tour on legal aid and clinical legal educational programmes associated with the law courts and law schools (June 1973). Part-time Lecturer in Law, Faculty of Law, Jodhpur University, India (1973-1976). External Expert for doctoral thesis in Law, at Banaras Hindu University (2002-2004) as well as at Delhi University (2011-2012). Trained a large number of American and Canadian senior law students, including students from Harvard Law School, Yale Law School, University of Wisconsin Law School and Osgoode Hall Law School, Canada (2010-2012). Visiting Professor, Osgoode Hall Law School (Autumn 2012). Participated in a six-week workshop organized by the University of Chicago on research on Indian law at Chicago, United States. During that period he closely and intensively worked and interacted with leading academicians and scholars of the United States (June 1970). Participated in an international project on "Delay in the administration of criminal justice in India", sponsored by the United Nations (1977). Member of a high-level delegation that visited the Union of Soviet Socialist Republics (USSR) to study and understand the Soviet legal and judicial system and its relevance for India (1988). Member of the Governing Council of the National Law University, Jodhpur (since 2006). Member of the Governing Council of the National Law School of India University, Bangalore (since 2007).

Conferred the Degree of Doctor of Laws (LL.D) by the Tumkur University, Karnataka, India, for his magnanimous contribution to law and justice. Recipient of the prestigious Rao Sinha Award (2012).

Addresses, lectures and seminars: Delivered various national and international lectures, including: the keynote address at the international conference organized by the United Nations on intellectual property, Auckland, New Zealand (2001); two lectures at the International Conference organized by the Bombay High

Court on "Alternative dispute resolution" (2004); the presidential address at the ceremony in honour of former distinguished Chief Justice M. C. Chagla of Bombay High Court, Mumbai (India) (2004); a speech entitled "Is this the time to review arbitration law in India?" at a conference organized by the Ministry of Law and Justice, Mumbai (2004); the keynote address at the function organized on the eve of United Nations Day, Durbar Hall, Raj Bhavan, Mumbai (2004); the valedictory address of the First Nani Palkhivala Memorial National Tax Moot Court Competition (2004); the presidential speech at the conference on "Equal justice and legal aid" at Y. B. Chavan Auditorium, Mumbai (2005); a special address on "Alternate dispute resolution system" at the District Bar Association, Pune, India (2005); an address on "Professional ethics" at the Bar Council of Maharashtra and Goa and Bharati Vidyapeeth University, Pune, India (2005); the Shri C. L. Agarwal Centenary Memorial Lecture at Jaipur, India (2006); a speech entitled "Judicial education on equality issues in South Asia: what we have accomplished together" at an international conference organized by the Asia-Pacific advisory forum, Kathmandu, Nepal (2006); the inaugural address at the State Lawyers Conference organized by the Bar Council of Maharashtra and Goa, Pune, India (2006); the keynote address on "Gender justice and sensitization of the judiciary: an overview" at the Asia-Pacific advisory forum on judicial education on equality issues, Karachi, Pakistan (2007); the keynote speech at the International Conclave of Intellectual Property for Judiciary and IP Practitioners, Goa, India (2007); the keynote address on "Alternative dispute resolution mechanism: national and international perspectives", University of Rajasthan, Jaipur (2007); a special address on "Clinical legal education" at a function organized by the Supreme Court Bar Association, New Delhi (2007); the keynote address on the occasion of an All India Seminar on "Access to justice" organized by the Confederation of the Indian Bar, Vigyan Bhawan, New Delhi (2007); the keynote address at the National Colloquium on "Emerging issues in public law" organized by the National Judicial Academy, Bhopal, India (2007); a special address at the Institute of Judicial Training and Research on "Challenges before the judiciary, role of judges in efficient functioning of the judiciary, judgement writing and judicial ethics", Lucknow, Uttar Pradesh, India (2007); a keynote address at the Karnataka Judicial Academy on "Effective role of alternative methods of dispute resolution and Section 89 of the Civil Procedure Code", Bangalore, India (2007); the inaugural address on the occasion of the "Tenth Raj Anand Moot Court Competition on Intellectual Property Rights in India", New Delhi (2007); a special address at the National Judicial Academy's North Zone Regional Judicial Workshop on "Techniques and tools for enhancing timely justice" at the Scope Complex, New Delhi (2007); the keynote address on "Child labour: moral and legal conflicts" at the symposium organized by the Delhi Legal Services Authority and Guru Gobind Singh Indraprastha University, New Delhi (2007); the keynote address on "Ethics in medical profession and medical negligence" at the Medico Legal Conference organized by the Indian Medical Association, Gurgaon, India (2007); the main address at the National Law Conference on "Dispensation of justice: challenges posed by new and emerging trends in law" organized by the Bar Council of Rajasthan and the Bar Council of India, Jodhpur, India (2007); the keynote address on "Importance of moot court competition: an overview" at the fourth K. K. Luthra Memorial National Moot Court Competition, New Delhi (2008); a special address at the function organized by the Delhi High Court Legal Services Committee and Delhi High Court Bar Association on "Advance training in mediation", Delhi (2008); a special address on "Review of legal education in law schools and continuing legal education" at the All India Seminar on Judicial Reforms organized by the Confederation of the Indian Bar, New Delhi (2008); the keynote address on "Professional ethics in reporting: problems in observance and solutions" at the workshop on "Law reporting and administration of justice" organized by the Supreme Court Legal Services Committee, the Press Council of India, the Indian Law Institute, the National Legal Services Authority and the Editors Guild of India (2008); a special address on "Indian and United States education: challenges and opportunities" at the seminar organized by the National Law School, Delhi, in collaboration with the Law School Admission Council and Institute of International Education New Delhi (2008); a special address on "The judicial role and activism and need for positive response from legislature and executive" at the function organized by the Eastern Book Company on "Judicial review: the current controversy", New Delhi (2008); the keynote address at the Colloquium on "Justice delivery of human trafficking crimes for judicial officers, prosecutors and police officers" organized by the National Legal Services Authority and the United Nations Office on Drugs and Crime, New Delhi (2008); a special address at the "Five day residential training course on reporting of court proceedings by media and administration of justice for legal correspondents/journalists" organized by the National Legal Services Authority and Indira Gandhi National Open University in association with the Press Council of India and the Editors Guild of India at Indira Gandhi Open University in New Delhi (2008); the inaugural address at the foundation stone laying ceremony for the establishment of the Centre for Continuing Legal Education and Advocates' Academy organized by the Bar Council of Rajasthan, Jodhpur (2008); the inaugural address on the occasion of the eighth and ninth Henry Dunant Memorial Moot Court

Competition organized by the Indian Society of International Law and the International Committee of the Red Cross, New Delhi (2008 and 2009); the valedictory address at the seminar on "Terrorism, human security and human rights" organized by the O. P. Jindal Global University and the Benjamin N. Cardozo School of Law of Yeshiva University, New Delhi (2009); the valedictory address on the occasion of the national rounds of the Philip C. Jessup 2009 International Law Moot Court organized by the University Institute of Legal Studies, Punjab University and Surana and Surana, at Chandigarh (India) (2009); a special lecture on the "Impact of globalization on the legal profession" in a lecture series organized by the Supreme Court Bar Association, New Delhi (2009); the inaugural address at the Judicial Colloquium on "Right to education" organized by the Human Rights Law Network, New Delhi (2009); the inaugural address at the National Tax Conference on "Taxation policy economic development" organized by the All India Federation of Tax Practitioners, Jaipur (2009); the inaugural address at the seminar on "Expectations and experiences of dispute resolution in telecom and broadcasting sectors" organized by the Telecom Disputes Settlement and Appellate Tribunal, Jodhpur (2009); the keynote address on "Transnational enforcement of intellectual property rights" at the fifth International Judges Conference on Intellectual Property Law, Washington D.C. (2009); a special address to faculty members and students on "Supreme Court of India and public interest litigation" at a special function organized in his honour by the Northwestern University School of Law, Chicago (United States) (2009); the main address on the occasion of "Maa easwaramma day" organized by the Sri Sathya Sai Seva Organization, New Delhi (2009); the inaugural speech at the national seminar on "Right to education" with the participation of distinguished academicians and educationists from all over India, New Delhi (2009); a special address on the occasion of the inauguration of the Rajasthan Chapter of the International Law Association, Jodhpur (2009); the main address at the International Law Association Regional Conference, New Delhi (2009); a special address on the occasion of the release of the book entitled *Cyber Laws and Information Technology*, New Delhi (2009); the inaugural address at the national tax conference on "Global economic scenario: role of tax professionals" organized by the All India Federation of Tax Practitioners at Varanasi, India (2009); an evaluation of theses for the award of Degree of Doctor of Philosophy for the Banaras Hindu University (2009-2010); a lecture on "Lawyers: past, present and future" at the National Academy of Legal Studies and Research, Hyderabad, India (2010); the convocation address at Sampurnanand Sanskrit Vishvavidyala University, Varanasi (India) (2010); the keynote address on "Legal profession, reforms in legal education and continuing legal education" at a function of the Bar Association of India, Gauhati, India (2010); the keynote address at the function on "Paper for national consultation for second general reforms in legal education" organized by the Ministry of Law in association with the National Law University, Delhi, and the Bar Council of India, New Delhi (2010); participation in deliberations and intense discussion at the sixth International Judges Conference on Intellectual Property Law, Brussels (2011); evaluation of theses for the award of the Degree of Doctor of Philosophy for the University of Delhi (2011-2012).

II. Members of the Court Whose Terms of Office Ended during the Period under Review

Judge Abdul G. Koroma

(Member of the Court from February 1994 to February 2012)

Born in Freetown, Sierra Leone.

LL.M. (Honours), Kiev State University, Master of Philosophy (International Law), King's College, University of London; Hon. LL.D., University of Sierra Leone; Barrister-at-Law, Honorary Bencher, Honourable Society of Lincoln's Inn, London; Honorary Professor, Gujarat National Law University, Gujarat, India.

As a Barrister and Legal Practitioner of the High Court of Sierra Leone, was appointed Special Adviser to the Attorney-General and Minister of Justice. Served as Legal Adviser to the Permanent Mission of Sierra Leone to the United Nations. Served as Ambassador Extraordinary and Plenipotentiary of Sierra Leone to the United Nations, New York, while concurrently accredited as High Commissioner of Sierra Leone to Jamaica and Trinidad and Tobago, and Ambassador to the Republic of Korea (Seoul) and Cuba (1981-1985).

Served as Ambassador Extraordinary and Plenipotentiary to Belgium, France, Luxembourg and the Netherlands while concurrently accredited to the European Communities and to the United Nations Educational, Scientific and Cultural Organization (UNESCO) (1985-1988). Served as Ambassador Extraordinary and Plenipotentiary of Sierra Leone to the Organization of African Unity (OAU) with concurrent accreditation to Ethiopia, Kenya, the United Republic of Tanzania and Zambia (1988-1992); also accredited to the Republic of Korea (Seoul) and the High Commissioner to Barbados, Jamaica and Trinidad and Tobago (1988).

As delegate to the General Assembly, served on the Sixth Committee (Legal) from 1977 to 1994 and was elected Chairman. Also served as delegate of Sierra Leone to the following United Nations bodies: the Special Committee on the Review of the Charter and on the Strengthening of the Role of the Organization; the United Nations Commission on International Trade Law (UNCITRAL); the United Nations Committee on the Peaceful Uses of Outer Space; the United Nations Programme of

Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law; served as Chairman of the United Nations Special Committee on the granting of independence to colonial countries and peoples (Committee of 24); headed various United Nations missions on the observance of the exercise of the right of self-determination in various non-self-governing territories. Served on the Bench of the International Court of Justice since 1994.

Represented Sierra Leone at many plenipotentiary conferences, including the United Nations Conference on the Succession of States in respect of Property, Debts and Archives, and was a signatory of the Convention; the Third United Nations Conference on the Law of the Sea (UNCLOS III) and Chairman of the African Group at the Conference. In that capacity, was closely associated with the elaboration of some of the key provisions of the resulting Convention. Was a signatory of the Convention.

Played an active role in and contributed to the elaboration of various contemporary legal instruments. Member of the International Law Commission (January 1982-1994), and Chairman of the Commission during its forty-third session (1991). Former Chairman of the Committee mandated to elaborate a Draft Statute for an International Criminal Court. As a Member of the International Law Commission, was an active participant and contributor to the codification and progressive development of such important international legal instruments as the Draft Code of Crimes against Peace and Security of Mankind; Relations between States and International Organizations; the Jurisdictional Immunities of States and Their Property; the Law of State Responsibility and the Law of the Non-Navigational Uses of International Watercourses; the articles on most-favoured-nation clauses; the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, and of the optional protocols thereto.

Contributions to other major areas of international law, including the law of self-determination, human rights law, international humanitarian law, and the peaceful settlement of disputes, and has written and lectured on these subjects. Served as expert consultant to the International Committee of the Red Cross (ICRC) at Geneva on the implementation of and respect for international humanitarian law. Has delivered lectures on these topics in many countries, including Cameroon, Canada, China, Ethiopia, Germany, Greece, India, Italy, Japan, Republic of Korea, Malta, Norway, Peru, Sweden, the United Republic of Tanzania and the United States of America. Visited Antarctica in 1985 for a symposium reviewing the Antarctic Treaty (1959).

Participated in conferences, symposiums and seminars on international law, including those held by the International Ocean Institute (Malta and Halifax, Nova Scotia); the International Law Institute (Hawaii); the International Criminal Jurisdiction (Talloires); the International Institute of Higher Studies in Criminal Sciences; Centre for International Studies, New York University School of Law; the Asian-African Legal

Consultative Committee. Also served as external examiner in international law for Ph.D. candidates at the University of Dalhousie, Halifax, Nova Scotia, Canada.

Member of the American Society of International Law and of the Planning Council of the International Ocean Institute (Halifax and Malta); Member and Vice-President of the African Association of International Law and Comparative Law; President of the African Society of International and Comparative Law; President, Henry Dunant Centre for Humanitarian Dialogue (Geneva) (1999-2006); Member of the International Institute of Humanitarian Law, San Remo; Member of the Institute of International Law; Member of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Office (Geneva); Member of the Advisory Board of the *Manchester Journal of International Economic Law*; Member of the Scientific Advisory Board of the Cologne Commentary on Space Law, Institute of Air and Space Law, University of Cologne; Member of the Advisory Board of the *Journal of International Humanitarian Legal Studies* (*JIHLS*) since May 2009.

Awarded the Order of the Commander of the Rokel by the Government of Sierra Leone for outstanding professional service (1991), the International Institute of Humanitarian Law Prize for the Promotion, Dissemination and Teaching of International Humanitarian Law (2005) and the Order of Grand Officer of the Republic of Sierra Leone (the highest national award) in recognition of his service to the nation in the field of international law and international justice as a judge at the International Court of Justice (2007).

Author of a thesis on the *Settlement of Territorial and Boundary Disputes in Africa* (University of London). Among articles published: "Humanitarian Intervention and Contemporary International Law", *Swiss Review of International and European Law*, No. 4 (1995); "The Peaceful Settlement of International Disputes", *Netherlands International Law Review*, Vol. XLIII, 1996-1997; "50th Anniversary of the Universal Declaration of Human Rights: Human Rights and International Humanitarian Law", *International Review of the Red Cross*, 1998; "The Influence of the Universal Declaration of Human Rights in Africa — Fifty Years after Its Adoption — A Legal Perspective", *Africa Legal Aid Quarterly*, 1998; "International Justice in Relation to the International Court of Justice", *Thesaurus Acroasium*, Vol. XXVI, Thessaloniki; "Implementation of the Law of the Sea Convention through Its Institutions: An Overview", in D. Vidas and W. Østreng (eds.), *Order for the Oceans at the Turn of the Century*; "The Humanitarian Consequences of Small Arms Proliferation", Paper delivered under the auspices of the Henry Dunant Centre for Humanitarian Dialogue; "The Future of the Common Heritage of Mankind", *1982 Convention on the Law of the Sea*, published by the Law of the Sea Institute, University of Hawaii, Honolulu; "Provisional Measures in Disputes between African States before the International Court of Justice", in *The International Legal System in Quest of Equity and Universality, Liber Amicorum Georges Abi-Saab*, ed. by

Laurence Boisson de Chazournes and Vera Gowlland-Debbas, 20
"Social Justice and the Role of an International Judge", Paper delive
at the Colloquium on Social Justice and International Law in Honour
Professor Georges Abi-Saab, 2001; Book Review on *Human Righ*
Africa Series, ed. Professor Christof Heyns, *Leiden Journal of Internatio*
Law, 2001; "Africa's Place in the International Justice System", Pa
delivered at the 643rd Wilton Park Conference: Justice in Africa, 20
"Refugees: A Continuing Challenge", Paper delivered at the 25th Rou
Table on Current Problems of International Humanitarian Law, Int
national Institute of Humanitarian Law, San Remo, 2001; "T
Protection of Civilian Populations in Non-International Armed Conflict
Paper delivered at the Third Meeting of Experts, International Instit
of Humanitarian Law, Stockholm, 2001; "Rules of the Court and Pract
Directions", *Max Planck Encyclopedia of Public International Law*, 200

Judge Bruno SIMMA

(Member of the Court from February 2003 to February 2012)

Born in Quierschied (Saar), Germany, on 29 March 1941.

Doctorate of Law, University of Innsbruck, Austria (1966). Doctor
honoris causa of the University of Macerata, Italy (2006) and of t
University of Innsbruck (2011).

Practice at the Bar in Innsbruck (1967). Assistant at the Faculty
Law, University of Innsbruck (1967-1972). Universitätsdozent (*ven*
legendi) for International Law and International Relations, Innsbru
(1971). Professor of International Law and European Community La
Director of the Institute of International Law, University of Muni
(1973-2003). Lecturer for International Law at the Training Centre f
Junior Diplomats, German Federal Foreign Ministry (1981-198
Visiting Professor at the University of Siena, Italy (1984-1985). Visiti
Professor (1986 and 1995), Professor of Law (1987-1992), Member of t
Affiliate Overseas Faculty (since 1997) and William H. Cook Global La
Professor of the University of Michigan Law School, Ann Arbor, Unit
States (on leave during tenure at the International Court of Justice
Lecturer (1995), Director of Studies (1976 and 1982) at the Hag
Academy of International Law. Dean of the Munich Faculty of La
(1995-1997).

Member of the United Nations Committee on Economic, Social an
Cultural Rights (1987-1996). Member of the United Nations Internation
Law Commission (1996-2003). Member of the Advisory Boards o
International Law and on United Nations Issues of the German Feder
Foreign Ministry (until 2002).

Was actively engaged in the following cases before the Internation
Court of Justice: *Land and Maritime Boundary between Cameroon an*
Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening) as couns
for Cameroon (1994-2002); *LaGrand (Germany v. United States o*
America) as Co-Agent and counsel for Germany (1999-2001), and *Certai*

Property (*Liechtenstein v. Germany*) as counsel for Germany (2001-2002).

Arbitrator in the "Iron Rhine" Arbitration between Belgium and the Netherlands (2003-2005); and in the *Kishenganga* case between Pakistan and India (2011). Presiding Arbitrator and Member of arbitral tribunals in a number of international investment and commercial arbitrations (ICSID, UNCITRAL/PCA, NAFTA, ICC).

Expert Consultant in a boundary dispute between Eritrea and Ethiopia. Expert Consultant in an arbitration based on the BIT between Germany and Russia (*Sedelmayer* case). Member of the Cairo Regional Centre for International Commercial Arbitration.

Member of the Court of Arbitration for Sport and employed in numerous sports law cases.

Expert at the Council of Europe (Directorate of Legal Affairs) (1972). Expert for the Human Dimension Mechanism of the OSCE and for Conflict Prevention Activities of the Secretary-General of the United Nations. Consultant in cases before the European Commission and the European Court of Human Rights. Consultant on international law to various governments.

Co-Founder and first President of the European Society of International Law (2004-2007). Associate Member of the Institut de droit international. Member of the International Council of Environmental Law. Member of the Council (since 1987) and Vice-President (1989-1993) of the German Society of International Law. Member of various other professional associations.

Member of the Advisory Boards of the Heidelberg Max Planck Institute for Comparative Public Law and International Law and the Walther Schücking Institute of International Law at the University of Kiel. Member of the Advisory Council of the British Institute of International and Comparative Law.

Co-Founder and co-editor of the *European Journal of International Law*. Member of the advisory boards of various international legal journals and yearbooks.

Certificate of Merit awarded by the American Society of International Law (1996). Distinguished Global Law School Fellow of New York University Law School (2005).

Visiting lectures at around 60 universities and other academic institutions worldwide.

Principal publications: *Das Reziprozitätselement in der Entstehung des Völkergewohnheitsrechts*, 1970; *Das Reziprozitätselement im Zustandekommen völkerrechtlicher Verträge. Gedanken zu einem Bauprinzip der internationalen Rechtsbeziehungen*, 1972; *Universelles Völkerrecht. Theorie und Praxis* (together with Alfred Verdross), 1st ed., 1976, 2nd ed., 1981, 3rd ed., 1984; *Territoriale Souveränität und Gebietshoheit. Zur völkerrechtlichen Lage der Oder-Neiße-Gebiete* (together with Alfred Verdross and Rudolf Geiger), 1980; *Europarecht in Fällen* (together with Waldemar Hummer and Christoph Vedder), 1st ed., 1991, 2nd ed., 1994, 3rd ed., 1999; *Kompetenzen und Grundrechte: Beschränkungen der Tabakwerbung aus der Sicht des Europarechts* (together with Joseph H. Weiler and Markus Zöckler), 1999; *Restitution und Entschädigung im Völkerrecht. Die Verpflichtungen der Republik Österreich nach 1945 im Lichte ihrer außenpolitischen Praxis* (together with Hans-Peter Folz), 2004; *International Protection of the Environment. Treaties and Related Documents* (together with Bernd Rüster and Michael Bock), 30 Vols., 1975-1983, continued in loose-leaf format 1990 ff.; *Zwischen Intervention und Zusammenarbeit. Interdisziplinäre Arbeitsergebnisse zu Grundfragen der KSZE* (together with Edda Blenk-Knocke), 1979; *Jus humanitatis. Festschrift zum 90. Geburtstag von Alfred Verdross* (together with Herbert Miehsler, Erhard Mock and Ilmar Tammelo), 1980; *United Nations Codification of State Responsibility* (together with Marina Spinedi), 1987; *Charta der Vereinten Nationen: Kommentar*, 1991; *The Charter of the United Nations. A Commentary*, 1st ed., 1995, 2nd ed., 2002; *Neues europäisches Völkerrecht nach dem Ende des Ost-West-Konfliktes?* (together with Hanspeter Neuhold), 1996; "Reflections on Article 60 of the Vienna Convention on the Law of Treaties and Its Background in General International Law", *Österreichische Zeitschrift für öffentliches Recht*, Vol. 20, 1970; "Völkerrechtswissenschaft und Lehre von den Internationalen Beziehungen. Erste Überlegungen zur Interdependenz zweier Disziplinen", *Österreichische Zeitschrift für öffentliches Recht*, Vol. 23, 1972; "Das Kernkraftwerk an der Grenze: Eine 'Ultra-Hazardous Activity' im Schnittpunkt von internationalem Nachbarrecht und Umweltschutz" (together with A. Randelzhofer), *Festschrift für Friedrich Berber zum 75. Geburtstag*, 1973; "Der Grundvertrag und das Recht der völkerrechtlichen Verträge", *Archiv des öffentliches Rechts*, Vol. 100, 1975; "Methodik und Bedeutung des Arbeit der Vereinten Nationen für die Fortentwicklung des Völkerrechts", *Die Vereinten Nationen im Wandel*, 1975; "Zur bilateralen Durchsetzung vertraglich verankerter Menschenrechte. Aktivlegitimation und zulässige Mittel nach allgemeinem Völkerrecht", *Autorität und internationale Ordnung. Aufsätze zum Völkerrecht* (Christoph Schreuer, ed.), 1979; "Grenzüberschreitender Informationsfluß und domaine reservé der Staaten", *Berichte der Deutschen Gesellschaft für Völkerrecht*, Vol. 19, 1979; "Der Beitrag von Alfred Verdross zur Entwicklung der Völkerrechtswissenschaft" (in collaboration with Michael Bock, Jennifer Clayton and Joachim Krauß), *Jus humanitatis. Festschrift für Alfred Verdross zum 90. Geburtstag*, 1980; "Völkerrecht in der Krise?", *Österreichische Zeitschrift für Außenpolitik*, Vol. 20, 1980; "Zur völkerrechtlichen Bedeutung von Resolutionen der UN-Generalversammlung", *Fünftes deutsch-polnisches Juristen-Kolloquium, Vol. 2: Die Bedeutung der Resolutionen der Generalversammlung der Vereinten Nationen* (Rudolf Bernhardt, Jost Delbrück and Ingo von Münch, eds.), 1981; "Droit international coutumier et droit interne selon la loi fondamentale", *Völkerrecht und Landesrecht. Deutsch-argentinisches Verfassungsrechtskolloquium in Buenos Aires* (Michael Bothe and R. E. Vinuesa, eds.), 1982; "Consent: Strains in the Treaty System", *The Structure* *and Process of International Law: Essays in Legal Philosophy, Doctrine and Theory* (R. St. J. Macdonald and D. M. Johnston, eds.), 1983; "Legal Aspects in Intra-(East-West) German Relations", *Maryland Journal of International Law and Trade*, Vol. 9, 1985; "Self-contained Regimes", *Netherlands Yearbook of International Law*, Vol. 16, 1985; "The Antarctic Treaty as a Treaty Creating an 'Objective Regime'", *Cornell International Law Journal*, Vol. 19, 1985-1986; "Grundfragen der Staatenverantwortlichkeit in der Arbeit der International Law Commission", *Archiv des Völkerrechts*, Vol. 24, 1986; "La inmunidad de los Estados", *Derecho Comparado* (Buenos Aires), 1987; "The Court of Arbitration for Sport", *Völkerrecht, Recht der Internationalen Organisationen, Weltwirtschaftsrecht: Festschrift für Ignaz Seidl-Hohenveldern* (K.-H. Böckstiegel, H.-E. Folz, J. M. Mössner and K. Zemanek, eds.), 1988; "Grenzüberschreitende Auswirkungen von Kernkraftanlagen und Völkerrecht" (together with Gunther Handl), *Österreichische Zeitschrift für Öffentliches Recht und Völkerrecht*, Vol. 39, 1988; "Bilateralism and Community Interest in the Law of State Responsibility", *International Law at a Time of Perplexity: Essays in Honour of Shabtai Rosenne* (Y. Dinstein and M. Tabory, eds.), 1989; "International Crimes: Injury and Countermeasures. Comments on Part 2 of the ILC Work on State Responsibility", *International Crimes of States* (J. H. H. Weiler, A. Cassese and M. Spinedi, eds.), 1989; "Wirtschaftliche, soziale und kulturelle Rechte im Völkerrecht. Der Internationale Pakt von 1966 und sein Kontrollverfahren" (together with Sabine Bennigsen), *Festschrift für Ernst Steindorff zum 70. Geburtstag am 13. März 1990*, 1990; "A Hard Look at Soft Law", *Proceedings of the 82nd Annual Meeting of the American Society of International Law*, 1991; "The Implementation of the International Covenant on Economic, Social and Cultural Rights", *Die Durchsetzung wirtschaftlicher und sozialer Grundrechte* (Franz Matscher, ed.), 1991; "The Sources of Human Rights Law: Custom, *Jus Cogens*, General Principles" (together with Philip Alston), *The Australian Year Book of International Law*, Vol. 12, 1992; "Does the UN Charter Provide an Adequate Legal Basis for Individual or Collective Responses to Violations of Obligations erga omnes?", *The Future of International Law Enforcement. New Scenarios — New Law?* (Jost Delbrück, ed.), 1993; "International Human Rights and General International Law: A Comparative Analysis", *Collected Courses of the Academy of European Law*, Vol. IV, Book 2, 1994; "Die Erzeugung ungeschriebenen Völkerrechts: Allgemeine Verunsicherung — klärende Beiträge Karl Zemaneks", *Völkerrecht zwischen normativem Anspruch und politischer Realität: Festschrift für Karl Zemanek* (K. Ginther, G. Hafner, W. Lang, N. Neuhold and I. Sucharipa-Behrmann, eds.), 1994; "Countermeasures and Dispute Settlement: A Plea for a Different Balance", *European Journal of International Law*, Vol. 5, 1994; "From Bilateralism to Community Interest in International Law", *Collected Courses*, the Hague Academy of International Law, Vol. 250, 1994-VI; "The Contribution of Alfred Verdross to the Theory of International

Law", *European Journal of International Law*, Vol. 6, 1995; "Human Rights", *The United Nations at Age Fifty: A Legal Perspective* (Ch. Tomuschat, ed.), 1995; "The 'International Community': Facing the Challenge of Globalization" (together with Andreas Paulus), *European Journal of International Law*, Vol. 9, 1998; "The Impact of Nuremberg and Tokyo: Attempts at a Comparison", *Japan and International Law, Past, Present and Future* (N. Ando, ed.), 1999; "Human Rights Considerations in Development Co-operation Activities of the European Community" (together with Jo Aschenbrenner and Constanze Schulte), *The European Union and Human Rights* (Ph. Alston *et al.*, eds.), 1999; "The Responsibility of Individuals for Human Rights Abuses in Internal Conflicts: A Positivist View" (together with Andreas Paulus), *American Journal of International Law*, Vol. 93, 1999; "NATO, the UN and the Use of Force: Legal Aspects", *European Journal of International Law*, Vol. 10, 1999; "Le rôle relatif des différentes sources du droit international (dont les principes généraux de droit)" (together with Andreas Paulus), *Droit international pénal*, 2000; "Reciprocity", *Encyclopedia of Public International Law* (Rudolf Bernhardt, ed.), Vol. IV, 2000; "International Adjudication and U.S. Policy — Past, Present, Future", *Democracy and the Rule of Law* (N. Dorsen and P. Gilford, eds.), 2001; "Peaceful Settlement of Boundary Disputes under the Auspices of the Organization of African Unity and the United Nations: The Case of the Frontier Dispute between Eritrea and Ethiopia" (together with Daniel Khan), *Liber Amicorum Judge Shigeru Oda*, Vol. 2 (N. Ando, E. McWhinney and R. Wolfrum, eds.), 2002; Reports on the Work of the International Law Commission at its 49th to 54th sessions, *Nordic Journal of International Law*, 1997-2003; "Staatenverantwortlichkeit und Menschenrechte im ILC-Entwurf 2001", *Verhandeln für den Frieden — Negotiating for Peace: Liber Amicorum Tono Eitel* (Jochen Abr. Frowein, Klaus Scharioth, Ingo Winkelman and Rüdiger Wolfrum, eds.), 2003; "Article 37" (together with Daphne Richemond), *The Statute of the International Court of Justice: A Commentary* (A. Zimmermann, Ch. Tomuschat and K. Oellers-Frahm, eds.), 2006; "Eine endlose Geschichte? Artikel 36 der Wiener Konsularkonvention in Todesstrafenfällen vor dem IGH und amerikanischen Gerichten", *Völkerrecht als Wertordnung. Festschrift für Christian Tomuschat* (P.-M. Dupuy, B. Fassbender, M. N. Shaw and K.-P. Sommermann, eds.), 2006; "Of Planets and the Universe: Self-Contained Regimes in International Law (together with Dirk Pulkowski), *European Journal of International Law*, Vol. 17, 2006; "From *LaGrand* and *Avena* to *Medellín* — A Rocky Road toward Implementation" (together with Carsten Hoppe), *Tulane Journal of International and Comparative Law*, Vol. 14 (2005-2006); "The *LaGrand* Case: A Story of Many Miscommunications" (together with Carsten Hoppe), *International Law Stories* (J. E. Noyes, L. Dickinson, M. W. Janis, eds.), 2007; "Human Rights and State Responsibility", *The Law of International Relations — Liber Amicorum Hanspeter Neuhold* (A. Reinisch and U. Kriebaum, eds.), 2007. "Der Einfluss der Menschenrechte auf das Völkerrecht: ein Entwurf", *International Law between Universalism and Fragmentation. Festschrift für Gerhard Hafner* (I. Buffard, J. Crawford, A. Pellet, S. Wittich, eds.), 2008. "Harmonizing Investment Protection and International Human Rights: First Steps towards a Methodology" (together with Theodore Kill), *Festschrift für Christoph Schreuer*, 2009. "How Has Article 36 (2) of the ICJ Statute Fared?", *A Wiser Century?* (A. Zimmermann, ed.), 2009; "Universality of International Law from the Perspective of a Practitioner", *European Journal of International Law*, Vol. 20, 2009; "Genocide and the International Court of Justice", *The Genocide Convention at Age Sixty* (C. Safferling, ed.), 2009; General Course at the Hague Academy of International Law on "The Impact of Human Rights on International Law", summer of 2009; "Exercise and Limits of Jurisdiction" (together with Andreas Müller), *Cambridge Companion to International Law* (2011); "Legal Consequences of an Impermissible Reservation to a Human Rights Treaty: Where Do We Stand?" (together with Gleider I. Hernández), *Essays in Honour of Professor Giorgio Gaja* (2011); "Human Rights before the International Court of Justice: Community Interest Coming to Life?", *Festschrift für Rüdiger Wolfrum* (2011); "Foreign Investment Arbitration: A Place for Human Rights?" (Grotius Lecture 2011), *International & Comparative Law Quarterly*, 2011.

III. Members of the Court Who Resigned during the Period under Review

Judge Awn Shawkat Al-Khasawneh

(Member of the Court from 2000 to 2011; Vice-President of the Court from 2006 to 2009; re-elected as from 6 February 2009)

Born in Amman, Jordan, on 22 February 1950.

Primary and secondary education at the Islamic Educational College of Amman. University education at Cambridge University (Queens' College), history and law, post-graduate studies in international law.

M.A., LL.M. (Cantab.), Honorary Fellow of Queens' College.

Joined the Jordanian diplomatic service in 1975. Second Secretary, then First Secretary at the Permanent Mission of Jordan to the United Nations in New York (1976-1980). Ministry of Foreign Affairs with special responsibility for international organizations and international law (1980-1985). Head of the Legal Department at the Ministry of Foreign Affairs (1985-1990). Seconded to the Royal Court (1990). Ambassador (1992). Adviser to the King and Adviser of the State on International Law with the rank of Cabinet Minister (1995). Chief of the Royal Hashemite Court (1996-1998).

Member of the Jordanian Royal Commission on Legislative and

Administrative Reform (1994-1996). Chairman of the Jordanian National Group on the Implementation of International Humanitarian Law (1998-2006).

Representative of Jordan at 19 sessions of the General Assembly of the United Nations (the Sixth (Legal) Committee) (since 1976). Jordan's alternate representative on the Security Council (1981-1982). Member of most Jordanian delegations to meetings of the Arab League, the Movement of Non-Aligned Countries and the Organization of the Islamic Conference held in the years 1980-1988. Member of, and Legal Adviser to, the Jordanian delegation to the peace negotiations in the Middle East (1991-1994).

Representative of Jordan at the following conferences and committees in the field of the codification and progressive development of international law: *Ad Hoc* Committee on the Drafting of an International Convention against the Taking of Hostages (1977-1980); United Nations Conference on Succession of States in respect of Treaties, Second Session (1978); United Nations Conference on Succession of States in respect of State Property, Archives and Debts (1982); Chairman of the Drafting Committee at the United Nations Conference on Treaties between States and International Organizations or between International Organizations (1986). Rome Conference on the drafting of a Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988).

Member of the Arab International Law Commission (1982-1989).

Member of the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities (1984-1993). Chairman of the Sub-Commission (1993).

Special Rapporteur of the Commission on Human Rights on the human rights dimensions of forcible population transfer.

Chairman of Commission IV, UNESCO General Conference (1993).

Member of the International Law Commission (1986-1999).

Member of the Permanent Court of Arbitration (since 1999).

Arbitrator in the Government of Sudan/The Sudan People's Liberation Movement/Army (Abyei Arbitration) (2008-2009).

Member of the International Law Association, Chairman of the Committee on Islamic Law and International Law (since 2003).

Member of the Board of Editors, *Palestine Yearbook of International Law*.

Member of the Council of the Centre of Islamic and Middle Eastern Law at the School of Oriental and African Studies, University of London.

Lectured and participated widely in academic seminars at various universities, including Oxford, Cambridge, London, Geneva, Abu Dhabi, Zanzibar and universities in Jordan.

Publications: Three reports on the human rights dimensions of forcible population transfers, to the Sub-commission on Prevention of Discrimination and Protection of Minorities (1993-1997); "General Principles and Methods for Executing a New Convention", in *Environmental Protection and the Law of War*, London, New York, 1992; "The

International Law Commission and Middle East Waters", in *Water in the Middle East: Legal, Political and Commercial Implications*, London, New York, 1995.

Honours: Istiqlal Order, First Class (1993); Kawkab Order, First Class (1996); Nahda Order, First Class (1996) (Jordan). Légion d'honneur, Grand Officier (1997) (France).

IV. JUDGES *AD HOC*

Article 7, paragraph 3, of the Rules of Court provides that judges *ad hoc* are to take precedence after the Members of the Court and in order of seniority of age.

Judge *ad hoc* Gilbert GUILLAUME

(Judge *ad hoc* in the cases concerning *Maritime Dispute (Peru v. Chile)*, *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia v. Thailand) *(Cambodia v. Thailand)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*)

Born in Bois-Colombes, France, on 4 December 1930.

Licence (Bachelor's Degree) in Law, University of Paris. Diplôme from the Paris Institute of Political Studies; Diplôme d'études supérieures d'économie politique et de science économique (Diploma of Advanced Studies in Political Economy and Economic Science), University of Paris.

Alumnus of the Ecole nationale d'administration.

Member of the French Council of State, as Auditeur (1957), then Maître des Requêtes (1963), and most recently Councillor of State (1981-1996).

Legal Adviser to the State Secretariat for Civil Aviation (1968-1979); French Representative on the Legal Committee of the International Civil Aviation Organization (ICAO) (1968-1979) and Chairman of the Committee (1971-1975); delegate to the diplomatic conferences, on the suppression of unlawful acts against the safety of civil aircraft (Montreal, 1971) and air safety (Rome, 1973); President of the Diplomatic Conference on the Liability of the Carrier (Montreal, 1975); Head of the French delegations to the diplomatic conferences on the liability of the carrier vis-à-vis third parties (Montreal, 1978) and the non-use of force against civil aircraft (Montreal, 1984).

Chairman of the Conciliation Commission, Organisation for Economic Co-operation and Development (1973-1978); Member of the European Space Agency Appeals Board (1975-1978); Director of Legal Affairs, Organisation for Economic Co-operation and Development (1979).

Director of Legal Affairs, French Ministry of Foreign Affairs (1979-1987).

Counsel for France in the arbitration proceedings between France and the United States over the Franco-American air agreement (1978); Agent for France in the arbitration proceedings between France and Canada over the Franco-Canadian fisheries agreement (1986); Agent for France in numerous cases before the Court of Justice of the European Communities and the European Commission and Court of Human Rights. French Representative on the Central Commission for the Navigation of the Rhine (1979-1987); Chairman of the Central Commission for the Navigation of the Rhine (1981-1982); French Representative on the Asian-African Legal Consultative Committee (1980-1987).

French delegate to the General Assembly of the United Nations (Sixth Committee) (1982-1987); Head of the French delegation to the Third United Nations Conference on the Law of the Sea (1982), the United Nations Conference on Succession of States in respect of State Property, Archives and Debts (Vienna, 1983) and the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations (Vienna, 1986).

Member of the International Court of Justice from 14 September 1987 to 11 February 2005; President of the Court from 2000 to 2003. President of the Chamber formed to deal with the case concerning the *Frontier Dispute (Benin/Niger)* (2002-2005); President of the Chamber formed to deal with the case concerning the *Application for Revision of the Judgment of 11 September 1992 in the Case concerning the* Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) *(El Salvador v. Honduras)* (2002-2003). Judge *ad hoc* chosen by Nicaragua in the case concerning *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, 2005-2009; judge *ad hoc* chosen by France in the case concerning *Certain Criminal Proceedings in France (Republic of the Congo v. France)*, 2003-2010; judge *ad hoc* chosen by France in the case concerning *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, 2006-2008; judge *ad hoc* chosen by Peru in the case concerning *Maritime Dispute (Peru v. Chile)*, since 2008; judge *ad hoc* chosen by Cambodia in the *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia v. Thailand)*, since 2011; judge *ad hoc* chosen by Nicaragua in the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, since 2010; judge *ad hoc* chosen by Nicaragua in the case concerning the *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, since 2011.

Member of the Permanent Court of Arbitration (since 1980). Designated Arbitrator by the International Telecommunications Satellite Organization (INTELSAT) and the International Centre for Settlement of Investment Disputes (ICSID).

Member of the Institut de France (Académie des sciences morales et politiques). Member of the Académie de marine. Member of the Académie de l'air et de l'espace.

Honorary President of the French branch of the International Law Association (ILA). Former First Vice-President of the Institute of International Law. Member of the Institute of International Law. Vice-

President of the French Society for International Law. Honorary Chairman of the French Society for Air and Space Law. Member of the International Academy of Comparative Law. Member of the Scientific Board of the *Revue générale de droit international public* and of the Board of Directors of the *Annuaire français de droit international*. Doctorate *honoris causa* of numerous universities.

Author of numerous works and articles. Has given a course on "Terrorism and International Law" at the Hague Academy of International Law ("Terrorisme et droit international", *Recueil des cours*, Vol. 215, 1989). Author of a work on *Les grandes crises internationales et le droit* (1994) and of a book entitled *La Cour internationale de Justice à l'aube du XXI^e siècle — Le regard d'un juge* (2003).

Grand officer of the Légion d'honneur. Numerous other French and foreign decorations.

Judge *ad hoc* Thomas A. Mensah

(Judge *ad hoc* in the case concerning *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*)

Born on 12 May 1932 in Ghana.

B.A. (First Class), University of Ghana (1956), LL.B. (Honours), University of London (1959), LL.M. (1962), J.S.D. (1964), Yale University Law School.

Professional and administrative positions: Assistant Registrar (Academic), University of Ghana (1960-1961); Lecturer in Law, University of Ghana (1963-1968), Acting Dean of the Faculty (1967-1968); Associate Legal Officer, International Atomic Energy Agency (IAEA), Vienna (1965-1966); Head of Legal Division (1968-1973), Director, Legal Affairs and External Relations (1974-1981), Associate Secretary-General (1981-1990), International Maritime Organization; Member, International Advisory Committee and Senior Editorial Board, the John D. and Catherine T. MacArthur Foundation Project of Governing Rules of International Law (American Society of International Law) (1990-1992); Special Adviser on Environmental Law and Institutions, United National Environment Programme (UNEP), Nairobi (1991-1992); Consultant in International Maritime and Environmental Law (1990-1993) to: *(a)* United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) Bangkok (1991-1993); *(b)* The World Bank, Washington D.C. (1994); *(c)* The International Oil Pollution Compensation Fund (IOPC Fund), London (1991-2004); *(d)* The United Nations Environment Programme (UNEP), Nairobi; International Legal Consultant; Member, Arbitral Tribunal *(Balkan (Ghana) Ltd.* v. *Republic of Ghana)*, Permanent Court of Arbitration, The Hague; Member, Arbitral Tribunal *(Republic of Bangladesh* v. *Republic of India)*, Permanent Court of Arbitration, The Hague; judge *ad hoc* *(Republic of Bangladesh* v. *Union of Myanmar)*, International Law of the Sea, Hamburg.

Academic positions: Visiting Professor, William S. Richardson School of Law, University of Hawaii (1992); Cleveringa Professor of Law, Leiden University, Netherlands (1993-1994); Professor of Law, William S. Richardson School of Law, University of Hawaii (October 1993-June 1995); Visiting Professor, World Maritime University, Malmo, Sweden (1985-1991); Co-Director, Dag Hammarskjold International Law Seminars, Uppsala University, Sweden, (1966 and 1967); Assistant Director, UNITAR/UNESCO African Seminar of International Law, Dar-es-Salaam, Tanzania, 1967.

Other positions: Member, University Council, University of Ghana (1966-1967); Member and Legal Adviser, Ghana Atomic Energy Commission (1967-1968); Master, Akoufo Hall, University of Ghana (1966-1968); Member, National Advisory Council of Ghana (1966-1968); Chairman, Constitutional Drafting Commission, Ghana (1978).

Professional associations: Member, Institut de droit international (since 1989); Member, Advisory Council, British Institute of International Comparative Law; Member, Standing Committee on Maritime Arbitration, International Maritime Arbitration Organization, International Chamber of Commerce, Paris; Honorary Member, Comité Maritime International (CMI); Member, Environmental Law Commission, International Council for the Conservation of Nature and Natural Resources (IUCN).

Academic, professional and civic awards: Doctor of Law *honoris causa*, Burgas Free University, Burgas, Bulgaria (2002); Doctor of Science *honoris causa*, World Maritime University, Malmo (2008); Commander's Cross of the Order of Merit of the Federal Republic of Germany (2007); Elizabeth Haub Prize for Environmental Law, Free University of Brussels (2006); Onassis Distinguished Scholar, Rhodes Academy of Oceans Law and Policy (2008); inducted into the Maritime Hall of Fame, New York (May 1998).

Publications: Author of numerous articles, monographs and papers in the fields of public international law, law of the sea, maritime law, international environmental law and international dispute settlement.

Judge *ad hoc* Emmanuel ROUCOUNAS

(Judge *ad hoc* in the case concerning *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia* v. *Greece)*)

Born in Zagazig, Egypt, on 16 February 1933. Greek nationality.

Ph.D. (Doctorat d'Etat, Lyon). Post-Doctorate, School of International Affairs, Columbia University.

Honorary Professor (2008) and Emeritus Professor (2000), Athens University. Member (since 1993) and President (since 2009) of the Institut de droit international (founded in Ghent, Belgium, 1873). Member (since 1997) and President (2005) of the Academy of Athens, Chair of Public International Law. Professor of International Law, Athens University (1970-2000). Lectures or conferences at the Universities of Athens, Thessaloniki (Greece); Paris I, X and XIII; Aix-en-Provence, Bordeaux and Rouen (France); University College, London (UK); Universities of San Sebastian and Jaume I University-Castellón, Navarra-Pamplona (Spain); University of Naples (Italy); Universities of Baltimore, Berkeley, City University of New York, Yale, Virginia (USA); Institut des hautes études internationales (Paris); the Hague Academy of International Law (1987, 1997).

Member of the Permanent Court of Arbitration (since 2001). Member of the Supreme Court of Article 100 of the Constitution of Greece (1992-1995); Member of the Court of Judiciary of Greece (1991-1993).

Member of UNESCO's International Bioethics Committee (1994-2003). Appointed "Independent Jurist for Western Sahara" by the Secretary-General of the United Nations (1993-1999). Member of the United Nations International Law Commission (1985-1991). Member of the United Nations Committee for the Elimination of Racial Discrimination (1983-1985).

Elected in 2005 by the Member States of the Council of Europe as a Member of the "Group of Wise Persons to Secure the Long-Term Effectiveness of the European Court of Human Rights" (ECHR), with the mandate to make proposals for the future of that Court. Rapporteur of the Council of Europe's Seminar on Human Rights and Terrorism (2005). Member of various expert committees and observer of the Steering Committee for Human Rights (CDDH) in the Steering Committee on Bioethics (1993-2005). Member of the Bureau of the CDDH (1979-2005). Member of the Group of Experts of the European Union for Central America (1992-1999). Member of the Group of Experts of the Conference on Security and Co-operation in Europe for the Balkans (1991-1992).

Director of the Bureau of International and Constitutional Institutions of the Academy of Athens (since 1997). Member of the Greek delegation in the General Assembly of the United Nations (1980-1999). Counsel and lawyer for the Greek Government in the *Aegean Sea Continental Shelf* case before the International Court of Justice (1976-1978). Member of Greek delegations in a number of diplomatic conferences, in particular the Diplomatic Conference on Humanitarian Law (1974-1977), the Conference on Security and Co-operation in Europe (Peaceful Settlement of International Disputes) and the World Conferences against Racism and Racial Discrimination.

Published twelve books and over 100 articles on general international law, the law of treaties, the law of the sea, self-defence, human rights, humanitarian law, bioethics, diplomatic history and European unification.

Judge *ad hoc* Christopher J. R. DUGARD

(Judge *ad hoc* in the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)*)

Born in Fort Beaufort, South Africa on 23 August 1936.

B.A. (1956) and LL.B. (1958), University of Stellenbosch; LL.B. (1965), Diploma in International Law (1965) and LL.D. (1980), Cantab.; LL.D. (*honoris causa*) of the Universities of Natal (1990), Cape Town (1996), Port Elizabeth (2003), Witwatersrand and Pretoria (2004), Stellenbosch (2011).

Lecturer in Law, University of Natal, Durban (1961-1963). Senior Lecturer in Law (1965-1969); Professor of Law (1969-1998); Dean of the Faculty of Law (1975-1977); Director of the Centre for Applied Legal Studies (1978-1990) and Professor Emeritus (since 1998) of the University of the Witwatersrand. Honorary Professor, University of Pretoria (since 2000).

Visiting Professor of Public and International Affairs, Woodrow Wilson School of Public and International Affairs, Princeton University (1969); Visiting Professor of Law, Duke University (1974-1975, 2008-2009); Visiting Professor of Law, University of California, Berkeley (Boalt Hall School of Law) (1981); Visiting Fellow, Research Centre for International Law, University of Cambridge (1985); Visiting Professor of Law, University of Pennsylvania (1989); Visiting Professor of Law, University of New South Wales, Australia (1991); Arthur Goodhart Visiting Professor of Legal Science, University of Cambridge (1995-1996); Fellow, Sidney Sussex College, Cambridge (1995-1997); and Director, Lauterpacht Research Centre for International Law, University of Cambridge (1995-1997). Professor of Public International Law (1998-2006) and Professor Emeritus, University of Leiden.

Admitted as an advocate of the Supreme Court of South Africa (1959); appointed Senior Counsel (1998).

President of the South African Institute of Race Relations (1978-1980); Founder and Member of the National Council of Lawyers for Human Rights (1980-1991); Commissioner of the Human Rights Commission (1988-1989); Board Member of the Independent Board of Inquiry (1990-1994); Chancellor to Bishop Tutu, Diocese of Johannesburg (Anglican) (1985-1987); Member of the Council of the University of Fort Hare (1990-1998); Member of the Technical-Committee for Investigating the Repeal or Amendment of Legislation Impeding Free Political Activity and Discriminatory Legislation (part of negotiations for Interim Constitution) (1993); Member of the Technical Committee to Advise the Constitutional Assembly on the Drafting of a Bill of Rights for the 1996 South African Constitution (1995).

Member of the Study Committee on International Protection of Human Rights of the American Society of International Law (1973-1975); Member of the Committee on International Terrorism, International Law Association (1974-1984); Member of the Committee on Extradition and International Terrorism (1985-1988); Co-Rapporteur to the Committee on Extradition and Human Rights (1992-1998); President of the South African Branch of the International Law Association (1993-1995, 1998); Member of the Governing Body of the African Society of International and Comparative Law (1995-2000).

Member of the Institut de droit international (since 1999). Member of the International Law Commission (1997-2011); Rapporteur and Member of the Bureau (1997-1998); Special Rapporteur on Diplomatic Protection (1999-2006). Member of Panel of Experts for Study on Customary Rules of International Humanitarian Law of the International Committee of the Red Cross (1997). Chair of the Inquiry Commission Established by the Commission on Human Rights to Investigate Violations of Human Rights and Humanitarian Law in the Occupied Palestinian Territories (2000-2001); Special Rapporteur to the Commission on Human Rights and Human Rights Council on the Situation of Human Rights in the Occupied Palestinian Territories (2001-2008); Chair of the Arab League Independent Fact-Finding Committee on Gaza (2009).

Judge *ad hoc* in the International Court of Justice in *Armed Activities on the Territory of Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda)* (2006) and *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)* (2008).

Honorary Member of the American Society of International Law (2008); Peter and Patricia Gruber Justice Prize (2010); Order of the Baobab (Gold), South Africa's highest civilian award for community service.

Author of *The South West Africa/Namibia Dispute* (1974), *Human Rights and the South African Legal Order* (1978), *Recognition and the United Nations* (1987), *International Law: A South African Perspective*, 4th ed., 2011.

Judge *ad hoc* Ahmed MAHIOU

(Judge *ad hoc* in the cases concerning *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)* and *Frontier Dispute (Burkina Faso/Niger)*)

Born in Bouira, Algeria, in 1936.

University studies in law and political science, Toulouse (1958-1964). Doctor of Law, Nancy (1967). *Agrégation* in public law and political science, Paris (1968). Doctor *honoris causa*, University of Toulouse.

Teaching Assistant, Lecturer and Professor at the University of Algiers and the Ecole nationale d'administration (1964-1990). *Doyen* of the Faculty of Law and Economic Science of Algiers (1970-1973). *Professeur associé* at the University of Aix-en-Provence (1981-1983) and the University of Dijon (1990-1991).

Director of the Institut de recherches et d'études sur le monde arabe et musulman (IREMAM) (1992-1997); Director of Research Emeritus at CNRS (since 2001).

Teaching assignments at numerous universities and institutes in Europe, Africa and the Middle East: Universities of Rabat, Casablanca, Tunis, Antananarivo, Paris I, Nanterre, Toulouse, Leipzig, Montpellier, Beirut, IHEI Paris and IHEI Geneva. Courses at the Hague Academy of International Law (The Hague, 1993) (Abidjan, 1996), seminar (2003) and general course in international public law (The Hague, 2008); courses at the Euromediterranean Academy of International Law, Castellon

(Spain, 1999), the International Academy of Constitutional Law (Tunis, 1988 and 2001) and the Institute of International Law and International Relations (Thessaloniki, 2008).

Joint Director of the DEA (post-graduate course) in International Law at the University of Aix-Marseille III. Head of a number of research programmes relating to international law and international relations, administrative law, economic law and constitutional law. Member of the board of advisers of a number of academic institutions and of several academic publications.

Participated in international conferences organized by the United Nations (environment, law of the sea) and in UNESCO general conferences. Member of the Board of Trustees and of the Advisory Committee of the United Nations Voluntary Fund for Indigenous Populations. Member of the United Nations International Law Commission (1982-1996) and Chairman of session (1996).

International Arbitrator (ICC and *ad hoc* arbitration): Vice-Chairman of the UNESCO Appeals Board; Vice-Chairman of the Arbitration Committee of the Franco-Arab Chamber of Commerce. Vice-Chairman of the National Commission for Justice Reform (Algeria).

Member of the Institut de droit international. Founder-Member or Member of a number of international learned societies.

Consultant for the Comité permanent consultatif maghrébin (1970), for the Algerian Ministries of Foreign Affairs, of Agriculture, of Industry, of Justice and of Higher Education, and for the Algerian Conseil économique et social. Produced expert studies for the Comité permanent consultatif maghrébin, UNITAR (1975), UNESCO (1980), UNIDIR (1990), UNDP (1997), IBRD (2002) and the European Union.

Author of the following publications: *L'avènement du parti unique en Afrique noire: l'expérience des Etats d'expression française*, 1969; *Problèmes actuels de l'Unité africaine*, 1973; *Cours d'institutions administratives* and *cours de contentieux administratif*, 1984; *La formation des normes en droit international du développement*, 1984; "Droits de l'homme et développement dans les constitutions africaines", in *Cours de l'Académie internationale de droit constitutionnel*, 1989; "Le cadre juridique de la coopération Sud-Sud. Quelques expériences ou tentatives d'intégration", in *Recueil des cours*, the Hague Academy of International Law, Vol. 241, 1993; *L'état de droit et le monde arabe*, 1996; "Multilatéralisme, droits de l'homme et globalité méditerranéenne", in *Recueils de textes avec une introduction*, UNESCO, Vol. III, Tomes 1 and 2 (with N. Bachi), 1998; *La codification du droit international*, 1999; "Droit international et développement", in *Cours euro-méditerranéens, Bancaja de droit international*, 2000; *Où va l'Algérie?*, 2001 and "Droit international et droit constitutionnel: de la non-intervention à la bonne gouvernance", in *Cours de l'Académie internationale de droit constitutionnel*, 2002; La sécurité alimentaire/Food Supply Security, the Hague Academy of International Law, 2003, general course: "Le droit international ou la dialectique de la rigueur et de la flexibilité", *Recueil des cours*, the Hague Academy of International Law, 2008.

Author of numerous other articles on international law and international relations, administrative law and administrative science, constitutional law and political science.

Winner of the Algerian Medal of Scientific Merit.

Judge *ad hoc* Jean-Pierre Cot

(Judge *ad hoc* in the cases concerning *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand)* and *Aerial Herbicide Spraying (Ecuador* v. *Colombia)*)

Born on 23 October 1937.

Licence en droit, Docteur en droit public, Paris Law Faculty (1955-1965); *Agrégé des facultés de droit et des sciences économiques* (1966).

Professor of public and international law and Dean, University of Amiens (1966-1969); Professor of public and international law, University of Paris I (Panthéon-Sorbonne) (1969-1998); Emeritus Professor, University of Paris I (since 1999); Associate Research Fellow, Université Libre de Bruxelles (since 1999).

Counsel and advocate in a number of cases before the International Court of Justice: *Frontier Dispute (Burkina Faso/Republic of Mali)*, *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, *Kasikili/Sedudu Island (Botswana/Namibia)*, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Burundi)*, *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening)* and *Sovereignty over Pulau Litigan and Pulau Sipadan (Indonesia/Malaysia)*.

Counsel and advocate, arbitral tribunal, France/UNESCO. President or Member of various arbitral tribunals established within the framework of the EDF and the ICC. Judge *ad hoc* at the International Tribunal for the Law of the Sea in the *Grand Prince* case (Belize *v.* France) (2001). Judge *ad hoc* at the International Court of Justice in the cases concerning *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine)* (2006-2009) and *Aerial Herbicide Spraying (Ecuador* v. *Colombia)*. Member (since 2002), International Tribunal for the Law of the Sea.

Member of Parliament for Savoie (1973-1981); Minister, Co-operation and Development (1981-1982); President of the first Conference on Lesser Developed Countries (1981); Executive Board of UNESCO (1983-1984); European Parliament (1978-1979 and 1984-1999); President of the Budget Committee of the European Parliament (1984-1989); President of the Socialist Group of the European Parliament (1989-1994); Vice-President of the European Parliament (1997-1999). Member of the Société française pour le droit international (President since 2004).

Author of numerous books and articles dealing with international law, European law and political science, in particular *La conciliation internationale*, 1968, and co-editor of *La Charte des Nations Unies, commentaire article par article*, 3rd ed., 2005.

Chevalier de la Légion d'honneur.

Judge *ad hoc* Budislav VUKAS

(Judge *ad hoc* in the cases concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Croatia* v. *Serbia*) and *Application of the Interim Accord of 13 September 1995* (*the former Yugoslav Republic of Macedonia* v. *Greece*))

Born in Rijeka/Sušak, Croatia, on 1 January 1938.

LL.B. (1961), LL.M. (1965), Doctor of Law (International Law) (1974), Faculty of Law, University of Zagreb; attended courses at the Hague Academy of International Law (1961 and 1968-1970); participated in the Centre of the Academy for Studies and Research (International Law and International Relations) (1967).

Professor of Public International Law, Faculty of Law, University of Zagreb (Assistant 1963-1970, Lecturer 1970-1974, Assistant Professor 1974-1977, Professor since 1977, retired in 2008); lectured at the Universities of Belgrade, Bologna, Boston, Brest, Ljubljana, Maribor, Milan, Osijek, Paris, Parma, Rijeka, Rome, Split, Thessaloniki, Tilburg and Valletta; directed a course on the law of the sea at the Dubrovnik Inter-University Centre (1984-2001); delivered a course on "States, Peoples and Minorities" at the Hague Academy of International Law (*Recueil des cours*, Vol. 231, 1992); delivered courses at the Rhodes Academy of Oceans Law and Policy (1999-2001 and 2004); delivered a course on intervention in contemporary international law at the Bancaja Euromediterranean Courses of International Law (Castellón, 2003). Consultant for UNEP, Nairobi (1981 and 1991) and its Co-ordinating Unit for the Mediterranean Action Plan, Athens (1985 and 1990); participated in: Third United Nations Conference on the Law of the Sea (1975-1982); Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (1984-1990 and 1994); International Seabed Authority (1994-1996); Meeting of the States Parties to the United Nations Convention on the Law of the Sea (1994-1996); the Sixth Committee of the United Nations General Assembly (1990, 1991, 1995); Working Group on the United Nations Decade of International Law of the Sixth Committee of the United Nations General Assembly (Chairman, 1990); CSCE Conference on the Human Dimension, Copenhagen Meeting (1990); CSCE Meeting of Experts on National Minorities, Geneva (1991); World Conference on Human Rights, Vienna (1993); 26th International Conference of the Red Cross and Red Crescent (1995).

Member of the Permanent Court of Arbitration (1989-1991 and since 1999); the International Tribunal for the Law of the Sea (1996-2005), Vice-President (2002-2005); the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organization (1985-2006); the Commissions of Inquiry formed under Article 26 of the Constitution of the International Labour Organization to examine the observance by Romania of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (1989-1991) and the observance by Belarus of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) (President, 2004); International Labour Organization, high-level direct contact mission to Croatia concerning the protection from asbestos, 2007; the Court of Conciliation and Arbitration within the OSCE (since 1995); the European Commission for Democracy through Law (1990-1991) and the Arbitration Tribunal established in 2005 by the Government of the Republic of Croatia and the Government of the Republic of Slovenia (since 2012).

Associate Member (1991-1997) and Member (since 1997) of the Institut de droit international; Rapporteur on "The Humanitarian Assistance", a resolution unanimously adopted at the Bruges Session of the Institute in 2003. Member of the Croatian Society of International Law (since 1961) and President (since 2010); the Argentine Society of International Law (since 2002); the Croatian Academy of Juridical Sciences (established in 2001); the International Council of Environmental Law, Bonn (since 1978); the Scientific Council of the European Institute for Marine Studies, Brest, France (1997-2005); and the Scientific Council of the Institut de droit économique de la mer, Monaco (2000-2006).

Author of numerous books, monographs, articles and papers in various fields of public international law, in particular law of the sea, international environmental law, international protection of human rights and national minorities, including *The Relativity of Treaties* (in Croatian), 1975; *Ethnic Minorities and International Relations* (in Croatian), 1978; *The New Law of the Sea* (ed., in Croatian), 1982, *Essays on the New Law of the Sea*, Vols. I-III (ed.), 1985-1996, *The Legal Regime of Enclosed or Semi-Enclosed Seas: The Particular Case of the Mediterranean* (ed.), 1988, *International Law*, Vol. I (with J. Andrassy and B. Bakotić, in Croatian), 1995; *Law of the Sea: Selected Writings*, 2004; *International Law*, Vol. III (with J. Andrassy, B. Bakotić and M. Seršić, in Croatian), 2006; Institute of International Law (Rapporteur, with R. Kolb), Humanitarian Assistance, Bruges Resolution 2003, 2006; *International Law*, Vol. I (second amended edition with J. Andrassy, B. Bakotić and M. Seršić), 2010; *International Law*, Vol. II (with J. Andrassy, B. Bakotić, D. Lapaš and M. Seršić), 2012.

Judge *ad hoc* Giorgio Gaja

(Judge *ad hoc* in the cases concerning *Territorial and Maritime Dispute* (*Nicaragua* v. *Colombia*), *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Georgia* v. *Russian Federation*) and *Jurisdictional Immunities of the State* (*Germany* v. *Italy: Greece intervening*))

Mr. Giorgio Gaja was judge *ad hoc* in the above-mentioned cases until he was elected as a Member of the Court on 6 February 2012. His biography can be found on page 52 of this *Yearbook*.

Judge *ad hoc* Yves Daudet

(Judge *ad hoc* in the case concerning *Frontier Dispute (Burkina Faso/Niger)*)

Born in Bordeaux, France, on 22 June 1940, French nationality.

Academic qualifications: *Agrégé* of the Faculties of Law (Public Law and Political Science) (1968), *Lauréat* of the Paris Faculty of Law, Doctor of Law (*cum laude*), *Prix de Thèse* of the Paris Faculty of Law, *Prix Georges Scelle* (1967), *Diplôme des études supérieures* (DES) in Political Science, Paris (1964), DES in Public Law, Paris (1963), Master's Degree in Public Law, Paris (1962).

Professional experience: Secretary-General of the Hague Academy of International Law since 2005, Emeritus Professor of the University of Paris I (Panthéon-Sorbonne) since September 2008, Professor at the University of Paris I (Panthéon-Sorbonne) (1995-2008), Professor at the University of Aix-Marseille III (1971-1995). Seconded from the University of Aix-Marseille III to the Ministry of Justice of Mauritius (from 1 September 1984) and to the University of Mauritius (from September 1985 to August 1988) (co-operation scheme); tasked with creating a programme of professional legal training and legal studies at the university (design and establishment of a School of Law and Professional Training for future advocates, lawyers and notaries). Visiting Professor at the Abidjan Faculty of Law (1973-1975) (co-operation scheme). Professor at the Bordeaux Faculty of Law (seconded to Martinique) (1969-1971). Lecturer, then Professor at the Rabat Faculty of Law (1967-1969). Assistant at the Paris Faculty of Law to Ms Suzanne Bastid (1964-1967).

Took part in various missions to over 60 countries and French overseas territories.

Principal administrative and teaching activities: Secretary-General of the Hague Academy of International Law (2005-). Member of the Commission of Specialists in Public Law of the University of Paris I (2003-2007). Member of the Commission of Specialists in Public Law of the University of Paris II (2003-2007). Adviser to the Director-General of EduFrance for legal programmes (2004-2006). First Vice-President of the University of Paris I, responsible for international relations (1999-2004). Interim Administrator of the *Unité de formation et de recherche de philosophie* of the University of Paris I (January-June 2003). Elected Member of the Board of Directors of the University of Paris I (1999-2005). Director of the *Diplôme d'études approfondies* (DEA) in international law and international organizations of the University of Paris I (1999-2005). Chair of the International Relations Committee of the University of Paris I (1999-2004). Co-ordinator of the legal departments of the University of Paris I (1997-2004). Administrator, then Director of the *Unité de formation et de recherche d'études juridiques générales* of the University of Paris I (1998-1999). Vice-Chairman of the

University Life and Studies Council of the University of Paris I (1997-1999). Director of the Centre Port-Royal René Cassin of the University of Paris I (1995-2007). Director of the DEA in international law at the University of Aix-Marseille III (1992-1996). Member of the Academic Advisory Group of the ERASMUS Bureau of the European Communities (1992 and 1993). External Examiner, University of Mauritius (1992-1995). Founder, then Director of the Continuing Education Centre of the Institut d'études politiques of Aix-en-Provence (1990-1995). Head of the Department of International Relations of the Institut d'études politiques of Aix-en-Provence (1989-1995). Elected Member of the Board of Directors of the Institut d'études politiques of Aix-en-Provence (1989-1995). Elected Member of the Scientific Council of the University of Aix-Marseille III (1993-1995). Elected Member of the Board of Directors of the University of Aix-Marseille III (1989-1993). Co-ordinator of an ERASMUS network of 24 European universities (ICP-92-F-1186/14) (1989-1995). Founder, then Director of the Law School of the University of Mauritius (1986-1988). Member of the Council of Legal Education of Mauritius (1985-1988). Co-ordinator of Legal Studies to the Attorney-General of Mauritius (1984-1986). Director of the Institut d'études politiques of Aix-en-Provence (1979-1984). Director of the International Relations Department of the University of Aix-Marseille III (1977-1984). Director of the Unité d'enseignement et de recherche des recherches juridiques of the University of Aix-Marseille III (1976-1979). Director of the Unité d'enseignement et de recherche des sciences juridiques et économiques of Martinique (1969-1971).

Member of the French Society of International Law; elected to the Board of the Society; Member of the French branch of the International Law Association; Member of the Board of Examiners of the *concours d'agrégation de droit public* (1993); Member of the French delegation to the Group of Experts, then the United Nations conference on the International Transfer of Technology (1978-1980); Member of the *Conseil d'Etat* working group on "The International Influence of French Law" (2001); Lecturer at the Hague Academy of International Law (2001).

Editorial responsibilities: Member of the Editorial Board of the *Annuaire français de droit international*, Member of the Editorial Board of *Droit prospectif*, Member of the Editorial Board of the *Annuaire des pays de l'océan indien*.

Awards: *Chevalier de la Légion d'Honneur*, *Chevalier des Palmes Académiques*, Great Cross O'Higgins Order of Chile, Commander of the Order of Merit (Federal Republic of Germany), Grand Officer of the Diplomatic Order (Peru), *Chevalier du mérite de l'Education Nationale* (Côte d'Ivoire).

Publications and works: Works: *La présidence des assemblées parlementaires françaises*, PUF, 1965; *Les Conférences des Nations Unies* *pour la codification du droit international*, LGDJ, 1968; *Les nouveaux statuts des enseignants du second degré*, Sirey, 1974; *Un code de conduite pour les transferts de technologie* (ed.), Economica, 1980; *Lexique de politique* (collab.), Paris, Dalloz, 6th ed., No. 1992; *Le droit à l'éducation*, UNESCO, 2001; *Actualités de la codification du droit international*, *Collected Courses of the Hague Academy of International Law*, Vol. 303, 2003; *Institutions des relations internationales* (collab.), Paris, Dalloz, (in preparation). Articles: "Méthode et procédure de la conférence de Vienne sur le droit des traités", *Annuaire français de droit international*, 1969; "Travaux de la Commission du droit international des Nations Unies", in *Annuaire français de droit international*, years 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983; "Techniques de codification" in *L'élaboration du droit international*, SFDI, Pedone, 1975; "La question du Timor oriental", *Annuaire des pays de l'Océan indien*, 1975; Chronique de jurisprudence administrative, *Rev. Ivoirienne de droit*, 1974-1975; "La codification de la coutume", *Juris-classeur de droit international commercial*, 1974, revised in 1991; "La situation internationale de l'Etat en période de crise", *Pouvoirs*, 1979; "Droit international et droit comparé", *Ann. Ste de legisl. comp*, 1982; "Les représentations de l'ONUDI chargées de la promotion des investissements", *Mélanges Colliard*, 1984; With F. Blanc: "The Training of Managerial Administrative Personnel in Haiti", University of Indiana Press, 1984; "Les comités d'experts" in *Les Agents internationaux*, Paris, SFDI/Pedone 1985; "Commentaire de l'art. 13 § 1 *(a)* de la Charte des Nations Unies" in J. P. Cot and A. Pellet, *L'ONU, la Charte*, Economica, 1985, 2nd ed., 1990; "L'école de droit de Maurice", *Mauritius Law Review*, 1988; "L'enseignement du droit dans les pays de droit mixte, le cas de l'Ile Maurice" in *Les droits mixtes*, PUAM 1988; "Le juge et les droits mixtes, le cas de Maurice" in a special issue of *Afrique contemporaine, La justice en Afrique*, Paris, La documentation française, 1991; "L'incorporation du droit international dans le droit français", *Essays in Honour of C. Neville Brown*, Birmingham, Holdsworth Club, 1991; "Le droit international tire-t-il profit du droit communautaire?", *Mélanges offerts à Jean Boulottis*, Paris, Dalloz, 1991; "Transferts de technologie et développement social et culturel" in *Le droit international du développement social et culturel* (ed.), Ed. A. Pellet, 1991, l'Hermès, 1997; "Régionalisme maritime comparé" in *La protection régionale de l'environnement marin, approche européenne* Graf Vitzthum and Claude Imperiali (eds.), Economica 1992; "Rapport introductif" to the international meetings of the Institut d'études politiques of Aix-en-Provence (1991) organized in collaboration with the United Nations Information Centre in Paris, *Aspects du système des Nations Unies dans le cadre de l'idée d'un "nouvel ordre mondial"*, Paris, Pedone, 1992; "The United Nations and the New World Order", Manchester Metropolitan University Publications; "L'ONU et l'OEA en Haiti et le droit international", *Annuaire français de droit international*, CNRS, 1992; "Rapport introductif" to the international meetings of the Institut d'études politiques of Aix-en-Provence (1992) organized in collaboration with the United Nations Information Centre in Paris. *Actualités des conflits internationaux*, Paris, Pedone, 1993; "Rapport introductif" to the international meetings of the Institut d'études politiques of Aix-en-Provence (1993) organized in collaboration with the United Nations Information Centre in Paris in *Les Nations Unies et le développement, le cas d'Afrique*, Paris, Pedone, 1994; "La Méditerranée, espace de coopération, le rôle des Nations Unies" in collab. with Geneviève Burdeau in *Mel. Mattrice Flory*, Economica, 1994; "Travaux de la Commission du droit international des Nations Unies", AFDI, 1994; "Rapport introductif" to the international meetings of the Institut d'études politiques of Aix-en-Provence (1994) organized in collaboration with the United Nations Information Centre in Paris, *Les Nations Unies et la reconstruction de l'Etat*, Paris, Pedone, 1995; "Un exemple d'influence du système français d'enseignement du droit dans un pays de droit mixte: l'Ecole de droit de l'Ile Maurice", *Revue d'histoire des facultés de droit*, No. 15; "Les Nations Unies et les évolutions du contenu du maintien de la paix", *Bull. du centre d'information des Nations Unies à Paris*, special issue, 50th anniversary of the UN, 1995; "Travaux de la Commission du droit international", AFDI, 1995; "Les particularismes juridiques de la crise d'Haiti" in *La crise d'Haïti* (Y. Daudet, ed.), CEDIN, Domat Montchrestien, 1996; "Le développement social international, nouveau concept pour un nouveau droit?", "Rapport introductif" to the international meetings of the Institut d'études politiques of Aix-en-Provence (1996) organized in collaboration with the United Nations Information Centre in Paris, *Le développement social international*, Paris, Pedone, 1996; "International action against State terrorism" in *Terrorism and International Law*, M. Floty and Rosalyn Higgins (eds.), Routledge, LSE, 1996; "Travaux de la Commission du droit international", AFDI, 1996; "Aspects juridiques et financiers des conceptions françaises des opérations de maintien de la paix" in *Les conceptions françaises des opérations de maintien de la paix* (B. Stern, ed.), CEDIN, Domat Montchrestien, 1997; "Maintien de la paix", *Répertoire de droit international*, Paris, Dalloz, 1997; "Les opérations de maintien de la paix sont elles toujours viables? (Observations sur les conflits en ex-Yougoslavie)", *Mélanges H. Thierry*, Paris, Pedone, 1998; "La codification du droit international", *Revue française d'administration publique*, 1997, No. 82; "L'Agenda pour la paix, nouveau mode de règlement des conflits", UNESCO; "Le droit au développement politique", *Mélanges Mohammed Bedjaoui*; "Le droit international est-il un droit de la liberté?", *Mélanges J. Mourgeon*; "Le cadre juridique des interventions extérieures", Ministry of Defence Colloquium, 1998; "La France et le financement des opérations de maintien de la paix", *L'observateur des Nations Unies*, 1998; "Les Nations Unies en ex-Yougoslavie", "Rapport introductif" to the international meetings of the Institut d'études politiques of Aix-en-Provence (1997) organized in collaboration with the United Nations Information Centre in Paris, *Les Nations Unies et l'ex-Yougoslavie*, Paris, Pedone, 1998; "Travaux de la Commission du droit international", AFDI, 1997; "Sujets futurs (de codification) et problèmes du processus législatif international" (Colloquium organized in Geneva by the United Nations International Law Commission on 21 and 22 April 1998); "Méthodes et pratiques de la codification du droit international", *Rapport au colloque de la Société française de droit international*, Paris, Pedone, 1999; "A l'occasion d'un cinquantenaire, quelques questions sur la codification du droit international", *Revue générale de droit international public*, 1998, No. 3; "Travaux de la Commission du droit international", AFDI, 1998; "L'ONU, pour quoi faire?", *Cahiers français*, No. 290, Paris, La documentation française, 1998; "La question de l'île de Tromelin", *Annuaire du droit de la mer*, 1998; "Problèmes posés par l'application de la Charte et fonctionnement du conseil de sécurité", Report to the fourth international colloquium organized by the *Assemblée nationale* on 23 June 1999, *Irak, sortir de la crise*, DIAN 46/99; "Travaux de la Commission du droit international", AFDI, 1999; "L'administration des territoires par les Nations Unies", *Cursos Euromediterraneos Bancaja de Derecho Internacional*, 2002; "L'ONU" in *Répertoire de droit international*, Paris, Dalloz, 2004; "La responsabilité des Nations Unies" in *La responsabilité en droit public. Aspects contemporains*, Brussels, Bruylant, 2005, pp. 249-260; Les réactions aux nouvelles menaces à la paix et à la sécurité dans le cadre de la Charte des Nations Unies", *Hague Academy Coalition*, 2006; "Les nouvelles sources du droit international", *Xiamen Academy of International Law Course* (China), 2006, "La responsabilité de protéger et reconstruction de l'Etat" in *Colloque de la SFDI "La responsabilité de protéger"*, 2007; "Le droit relatif aux collectivités territoriales de l'ancien outre-mer français dans le contentieux frontalier récent devant la Cour internationale de Justice" in "Terres du droit", *Mélanges Y. Jegouzo*, Paris, Dalloz, 2009; "Le tribunal spécial pour le Liban" in "Le procès international", *Mélanges J. P. Cot*, Brussels, Bruylant, 2009; "Perspectives" in *Le Pacte mondial, dix ans après*, L. Boisson de Chazounes (ed.), Brussels, Bruylant, 2011; "Le juge et le professeur, convergences, divergences, complémentarités?", *Liber amicorum R. Ranjeva*, 2013.

Judge *ad hoc* Bruno SIMMA

(Judge *ad hoc* in the case concerning the *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*)

Mr. Bruno Simma was a Member of the Court from 6 February 2003 to 5 February 2012, when his term of office ended. He was chosen by the Republic of Costa Rica in March 2012 as judge *ad hoc* in the above mentioned case. His biography can be found on page 66 of this *Yearbook*.

Judge *ad hoc* Francisco ORREGO VICUÑA

(Judge *ad hoc* in the case concerning
Maritime Dispute (Peru v. *Chile)*)

Born in Santiago, Chile, on 12 April 1942.

Licence in Law, University of Chile. Ph.D. in International Law, London School of Economics and Political Science, University of London.

Professor of International Law, currently affiliated with the Heidelberg Center for Latin America Master's Program in International Law, Trade, Investments and Arbitration, offered jointly by the University of Heidelberg Law School and the Max Planck Institute for International and Comparative Law. Delivered the course on "The Legal Nature of the Exclusive Economic Zone" at the Hague Academy of International Law (1986). Delivered the Sir Hersch Lauterpacht Memorial Lectures at the Cambridge Research Centre of International Law (2001). Medal of Merit, University of Heidelberg (2007). Visiting Professor, Law School, University of Paris II, Stanford University, University of Miami and other institutions.

Member (elected in 1991) and former President (2005-2007) of the Institut de droit international.

Judge at the International Monetary Fund Administrative Tribunal.

Former Judge (1992-2009) and President (2001-2004) of the World Bank Administrative Tribunal. Former President of a panel at the United Nations Compensation Commission (1999-2001). Former judge *ad hoc* at the International Tribunal for the Law of the Sea (case concerning the *Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean, Chile* v. *European Union*) (2000-2009).

Rapporteur on dispute settlement for the 1999 Centennial Commemoration of the 1899 Peace Conference by invitation of the Governments of the Netherlands and the Russian Federation (1997-1999).

Former Legal Adviser to the Organization of American States in Washington, D.C. (1965-1969, 1972-1974) and Member of the Inter-American Juridical Committee (1974-1976). Executive Secretary of the Inter-American Peace Committee, Organization of American States (1965-1969). Member of the Chilean Commission for the Papal Mediation between Chile and Argentina (1979-1985). Delegate to the Third United Nations Conference on the Law of the Sea (1975-1982) and other multilateral negotiating conferences. Delegate to the Sixth Committee of the United Nations General Assembly (1975, 2001).

Arbitrator by appointment of the International Centre for Settlement of Investment Disputes, the London Court of International Arbitration, the International Court of Arbitration of the International Chamber of Commerce, the Permanent Court of Arbitration, NAFTA and UNCITRAL proceedings. Member of the Governing Board, International Council for Commercial Arbitration (elected in 2008). Member of the Panel of the World Trade Organization for the settlement of the dispute on large civil aircraft between the European Union and the United States (since 2008). Member of the Board of Trustees, Dubai International Arbitration Center.

Member of the Advisory Board, Max-Planck-Stiftung für Internationalen Frieden und Rechtsstaatlichkeit.

Member of the Board and Advisory Committees of the *International and Comparative Law Quarterly*, the *Cahiers de l'arbitrage (Paris Journal of International Arbitration)* and other learned journals.

Author of major works on international law, with particular reference to *Antarctic Resources Policy*, *Antarctic Mineral Exploitation*, *The Exclusive Economic Zone: Regime and Legal Nature under International Law*, *La Zone Economique Exclusive dans la législation et la pratique des Etats*, *The Changing International Law of High Seas Fisheries*, and *International Dispute Settlement in an Evolving Global Society*. Has also written numerous articles in learned journals specializing in international law, the law of the sea and international dispute settlement.

Judge *ad hoc* Auguste Mampuya KANUNK'A-TSHIABO

(Judge *ad hoc* in the case concerning *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*)

Born in Ndemba, province of Kasai-Occidental, Democratic Republic of the Congo, on 13 February 1943.

Licence in Law, University of Nancy 2 (1968). *Diplôme d'études supérieures* (DES) in Public Law, University of Nancy 2 (1969). DES in Political Science, University of Nancy 2 (1971). European DES (DESE), Centre européen universitaire, University of Nancy 2 (1970). State Doctorate in Law, with specialization in Public International Law, University of Nancy 2 (1972).

Assistant in Constitutional Law, chargé d'enseignement (course in international institutions), University of Rheims (1969-1972). Professor in the law faculty of the University of Kinshasa (since 1972), currently graded professeur ordinaire; courses in International Law. Visiting Professor at the University of Metz, International Law and Constitutional Law (2001-2003). Visiting Professor (1994-2001) and Professor (2002-2008) in the law faculty, University of Nancy, Public International Law, general theory of law.

Member and Deputy Director of the Centre d'étude et de recherche de droit international et européen (CERDIE) (2001-2004), University of Nancy 2. Researcher and analyst in law and politics.

Author of a number of studies in international law, including works of theoretical and applied research: *Emergence des Etats nouveaux et droit international – quelques tendances théoriques*, 1984; *Désuétude du système de sécurité collective*, 1986; "La production constitutionnelle au cours des transitions africaines", in *Les mutations de la notion de constitution entre mondialisation et nouveaux conflits*, *Civitas Europa No. 6*, March 2001; *Conflit armé au Congo-Zaïre, ses circonstances et sa gestion sous l'angle du droit des Nations Unies*, Ed. AMaed, Vandœuvrelès-Nancy, 2001; "Responsabilité et réparation dans le conflit des grands-lacs au Congo-Zaïre", *RGDIP*, 2004-3, pp. 679-707; *Le droit international à l'épreuve du conflict des Grands-Lacs au Congo-Zaïre, guerre – droit – responsabilité et réparations*; "Négociation et facilitation, l'expérience des Grands-Lacs. Conflit en RDC", in *Fin des conflits et réconciliation: conditions pour une paix durable*, Verdun, Centre Mondial de la Paix/Université de la Paix, 2004, pp. 153-169; *Espoirs et déception de la quête constitutionnelle congolaise*, 2005; "De la guerre du Golfe à la guerre contre l'Irak: la crise irakienne revisitée", in R. Kherad (ed.), *Les implications de la guerre en Irak. Colloque international du mercredi 12 mai au jeudi 13 mai 2004*, Faculté de droit, d'économie et de gestion de l'Université d'Angers, 2006; "Historique et contenu de l'article 2§7 de la Charte des Nations Unies: La pratique de l'exception posée par l'article 2§7 de la Charte des Nations Unies" in *Que reste-t-il de la clause de compétence nationale?, Civitas Europa No. 17*, Brussels, Bruylant, 2006, pp. 11-30; "La protection diplomatique des sociétés et des actionnaires: l'arrêt Ahmadou Sadio Diallo revigore la jurisprudence Barcelona Traction", in *La France, l'Europe et le Monde, Mélanges en l'honneur de Jean Charpentier*, Paris, Pedone, 2008, pp. 173-187; "Reconstruire la défense de la RD Congo: faire une autre armée? Faire une autre société?", in *Congo-Afrique*, No. 471-472, 2013, pp. 21-29 (with Pierre Akele, from the University of Kinshasa).

Minister of Justice of Zaire (1977). *Chargé de mission*, Ministry for Territorial Administration, with responsibility for decentralization (1981-1983). Legal Adviser to the Board of Directors of Zaire Universities (1982-1984). Political Counsellor to the Presidency of the Republic, then Senior Presidency Official with the rank of Deputy Director of the Personal Office of the President (1993-1997). Has carried out a number of official foreign missions (United States of America, United Nations, United Kingdom, France, Panama, Mozambique, Romania).

Expert to the Electoral Institute for Southern Africa (EISA), 2004-2008.

Officier of the Ordre national des Palmes académiques (France).

Judge *ad hoc* Joe VERHOEVEN

(Judge *ad hoc* in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*)

Born in Brussels, Belgium, on 12 March 1943.

Doctor of Law (1965) and Agrégé de l'enseignement supérieur (1975).

Professor at the Catholic University of Louvain (UCL) (1975-2000); Law Faculty Course Director for Public International Law and European Community Law. Professor at the St. Louis University Faculties (Brussels). Professor at the University of Paris II, Panthéon-Assas (since 2000); Director of Master 2, Public International Law; Director of the Institut des hautes études internationales (IHEI).

Member of the Research Council of the Catholic University of Louvain (1994-1999); Member (1995-2004) and President (since 1998) of the Commission des sciences juridiques du Fonds national de la recherche scientifique.

Attendance at numerous conferences and teaching abroad (notably: Aix-Marseille, Bordeaux, Hitotsubashi University, Institut universitaire des hautes études internationales (Geneva), New York University, University of Ottawa, Paris I, Paris II, University of California (Los Angeles), Australian National University (Canberra), Université La Sapienza (Rome)); Visiting Scholar at Stanford Law School (1998).

Teaching at the Hague Academy of International Law (Private International Law Section) in 1985; invited to give the 2002 general course on public international law.

Member of various learned societies (Member-elect of the Council of the French Society for International Law); Member of the Editorial Board of various law periodicals. Director of the *Annuaire français de droit international* (since 2002).

Member of the Permanent Court of Arbitration; Expert Adviser to the Centre for the Prevention of Conflict in the Organization for Security and Co-operation in Europe (OSCE).

Participated in certain international arbitrations, *ad hoc* or ICC; State's counsel for Iran in several cases before the Iran-United States Claims Tribunal; various consultative positions.

Member (since 1991) of the Institute of International Law (elected Associate at Helsinki in 1985), Secretary-General of the Institute (since 2003); Rapporteur on the draft resolution on *Immunities from Jurisdiction and Execution of Heads of State and Government in International Law*, adopted at Vancouver (2001).

Winner of the Charles De Trooz Prize (1965) (for an essay on Luise Rinser), the Henri Rolin Prize (1976) (for a work on international recognition) and the Fondation E. de Laveleye Prize 1993-1998 (Royal Academy of Belgium).

Author of the following monographs: *La reconnaissance internationale dans la pratique contemporaine. Les relations publiques internationales*, 1975; "Les nullités du droit des gens", *Droit international*, Institut des hautes études internationales de Paris, 1981; "Relations internationales de droit privé en l'absence de reconnaissance d'un Etat, d'un gouvernement ou d'une situation", *Recueil des cours*, the Hague Academy of International Law, Vol. 192, 1985; *The Antarctic Environment and International Law* (published in collaboration with Ph. Sands), 1992; *Droit de la Communauté européenne*, 1996, 2nd ed., 2000; *Public International Law*, 2000; *Le droit international des immunités: contestation ou consolidation?* (ed.), 2004; "Considérations sur ce qui est commun (cours général de droit international public)", the Hague Academy of International Law, *Collected Courses*, Vol. 334, 2008. Also author of over 150 legal articles, commentaries or essays in various Belgian or foreign publications or collective works including: "Contrats entre Etats et ressortissants d'autres Etats", *Le contrat économique international. Stabilité et évolution, VII* *Journées d'études juridiques Jean Dabin*, 1975; "L'Etat et l'ordre juridique international. Remarques", *RGDIP*, 1978; "Droit international des contrats et droit des gens", *RBDI*, 1978-1979; "La notion d'applicabilité directe du droit international", *RBDI*, 1980; "Sanctions internationales et communautés européennes. A propos de l'affaire des îles Falkland (Malvinas)", *Cah. dr. europ.*, 1984; "Sur les conflits de lois en droit des gens", *Journal du droit international*, 1984; "Le droit, le juge et la violence. Les arrêts Nicaragua *v.* United States", *RGDIP*, 1987; "Sur la Palestine en droit international privé, note sous AG Neumünster", *Revue critique de droit international privé*, 1988; "Etats alliés ou Nations Unies. L'ONU face au conflit entre l'Irak et le Koweit", *AFDI*, 1990; "Sur la récupération à l'étranger des sommes détournées par d'anciens chefs d'Etat", *Mélanges Lalive, Helbing et Lichtenhahn, Bâle-Francfort*, 1993; "Les citoyens de l'Europe", *Annales dr. Louvain*, 1993; "Sovereign States. A Collectivity or a Community?", *Hitotsubashi Journal of Law and Politics*, 1994; "La reconnaissance internationale, déclin ou renouveau?", *AFDI*, 1993; "Human Rights, Intervention and Universality", *Hungdah Chiu* et al., *Proceedings of the International Law Association (ILA), First Asian-Pacific Regional Conference*, 1995; "Les principales étapes de la protection internationale des minorités", *Rev. trim. Dr. H.*, 1997; "L'application ou la prise en considération des directives communautaires en droit belge, note sous Cass., 2 Dec. 1996", *Rev. crit. j. b.*, 1998; "La Communauté européenne et la sanction internationale de la démocratie et des droits de l'homme", *Liber Amicorum Mohammed Bedjaoui*, 1999; "Jus Cogens and Reservation or 'Counter-Reservations' to the Jurisdiction of the International Court of Justice", in (K. Wellens, ed.), *International Law: Theory and Practice, Essays in Honour of E. Suy*, 1998; "Mr. Pinochet, la coutume internationale et la compétence universelle, note sous Civ. Bruxelles, 6 Nov. 1998", *JT*, 1999; "Vers un ordre repressif universal? Quelques observations", *AFDI*, 1999; "Les conceptions et les implications du temps en droit international", SFDI, *Le droit international et le temps*, 2001; "Les immunités de jurisdiction et d'exécution du chef d'Etat et du gouvernement en droit international", *Ann. IDI*, Vol. 69; "Patrimoine culturel et droit international", *Cursos Euromediterráneos Bancaja de derecho international*, Vol. V, 2001; "Les 'étirements' de la legitime défense", *AFDI*, 2002; "Article 21 of the Rome Statute and the Ambiguities of Applicable Law", *Neth. YIL*, 2002; *Pour une critique de la compétence universelle*, *REMALD*, 2004; "Jura Novit Curia et le juge international", *Essays in Honour of Christian Tomuschat*, 2006; "Sur les relations entre le juge communautaire et les autorités internationals", *AFDI*, 2008.

Judge *ad hoc* Raúl Emilio VINUESA

(Judge *ad hoc* in the the case concerning *Aerial Herbicide Spraying (Ecuador* v. *Colombia*))

Born in Buenos Aires, Argentina, 30 March 1943.

Diploma in International Law, Faculty of Law, University of Cambridge (Jesus College) (1976); Diploma in European Studies, University of Amsterdam, Europa Instituut (1974); Master in Law (LL.M.), Harvard Law School, Harvard University (1970); Master of Arts, The Fletcher School of Law and Diplomacy, Tufts University (1968); Abogado, (Honour's Diploma), Faculty of Law, University of Buenos Aires (1966).

Full Professor of Public International Law and Full Professor of Human Rights, Faculty of Law, University of Buenos Aires, since 1984. Professor of International Law at the Foreign Service Institute (ISEN) since 1972; Professor of Law of the Sea and International Humanitarian Law at the Naval War College; Visiting Professor of International Law at the Universidad Torcuato Di Tella, at the Universidad de San Andrés and at the Facultad Latino Americana de Ciencias Sociales (FLACSO).

Member of the Institut de droit international; Member of the Argentine National Group, Permanent Court of Arbitration; Judge *ad hoc*, International Court of Justice in the case concerning *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* (since 2006) and in the case concerning *Aerial Herbicide Spraying (Ecuador v. Colombia)* (since 2010); Co-Arbitrator at ICSID *ad hoc* Arbitration Tribunals in the case *Flughafen Zürich A.G. v. República Bolivariana de Venezuela* (ICSID Case No. ARB/10/19); in the case *Repsol YPF S.A.* et al. v. *Republic of Ecuador and PetroEcuador* (ICSID Case No. ARB/08/10); in the case *Murphy Exploration and Production Company Inc.* v. *Republic of Ecuador* (ICSID Case No. ARB/08/04); in the case *Alasdair Anderson and Others* v. *Republic of Costa Rica* (ICSID Case No. ARB(AF)/07/3); President at ICSID *ad hoc* Arbitration Tribunals in the case *M.C.I. Power Group, L.C. and New Turbine, Inc.* v. *The Republic of Ecuador* (ICSID Case No. ARB/03/6) and in the case *Ridgepointe Ltd.* v. *Democratic Republic of Congo* (ICSIC Case No. ARB/00/8).

President of the Mercosur *ad hoc* Arbitration Tribunal, case concerning *Discriminatory Measures and Restrictions to the Commerce of Tobacco between the Oriental Republic of Uruguay and the Federative Republic of Brazil*. President of the Mercosur *ad hoc* Arbitration Tribunal on "Remodeled Tires" between the Oriental Republic of Uruguay and the Federative Republic of Brazil. Co-Arbitrator at the Mercosur *ad hoc* Arbitration Tribunal on "Textiles Safeguards" between the Republic of Argentina and the Federative Republic of Brazil. Member of the *ad hoc* Arbitration Tribunal of the International Court of Arbitration (International Chamber of Commerce) in the case *Pan American* v. *Republic of Argentina*; Member of the *ad hoc* Arbitration Tribunal in the case *Mercovia S.A.* v. *COMAB* (Comisión Argentino Brasilera para el Puente Sao Borja Santo Tomé); Member of the *ad hoc* Arbitration Tribunal of the International Court of Arbitration (International Chamber of Commerce): *Boskalis International V.B.* et al. v. *Puentes del Litoral S.A.* (Case 11.949/KGA); *SMP* (United States) v. *Estado Nacional* (Republic of Argentina); Member of the Arbitration Tribunal of CARU, *(Comisión Argentino Uruguaya del Rio Uruguay)*, from 1990-2000; Member of the list of arbitrators of the Central American Mechanism for the Settlement of Commercial Disputes, since December 2005; Member of the list of arbitrators for the Settlement of Disputes System of the Agreement *Complementación Económica No. 35, Mercosur-Chile*, since November 2004; Member of the list of arbitrators for the Settlement of Disputes System of the Agreement *Complementación Económica No. 36*, *Mercosur-Bolivia*, since August 2004; Member of the list of arbitrators appointed by the Permanent Commission of the International Movement of the Red Cross, since January 2001; Member of the Panel of Arbitrators, International Centre for Settlement of Investment Disputes, World Bank, Washington, since 1999.

Member of the Group of Experts on Settlement of Disputes between States and Investors, Secretariat of the United Nations Conference on Commerce and Development (UNCTAD), Geneva, since October 2004; Member of the Committee on environmental law, IUCN; Member of the Group of Experts of the International Committee of the Red Cross on: environmental law and humanitarian law, 1992-1994; on maritime warfare, 1993-1995 and in customary rules of international humanitarian law, 1996-1999.

Former Adviser to the Ministry of Foreign Affairs of Argentina on international commercial arbitration and foreign litigation from October 1997 till March 2001. Legal counsel on arbitration cases at ICSID: (*Mobil Oil* v. *Republic of Argentina; Lanco International Inc.* v. *Republic of Argentina; Houston Industries Energy, Inc. and Others* v. *Republic of Argentina; Empresa Nacional de Electricidad S.A.* v. *Republic of Argentina*); Former Legal Adviser on International Law at the Procuración del Tesoro de la Nación, from 1991 to 1996, with advisory responsibilities on international legal aspects of foreign debt negotiations, arbitration clauses, human rights, extradition and maritime law; Former Legal Adviser on International Human Rights issues to the Ministry of Justice, from 1993 to 1996; Member of the National Committee on Human Rights, Ministry of Foreign Affairs of Argentina, responsible for the drafting of guidelines on human rights foreign policy. Member of the Argentine delegation to the United Nations Conference on Human Rights, Vienna, 1993; Former Adviser to the Ministry of Foreign Affairs, from 1984 to 1989 with responsibilities in dealing with diplomatic protection, extradition and foreign litigation of the Argentine Government at foreign courts; Secretary Commissioner at the Argentine National Commission on Provincial Boundaries, Ministry of Internal Affairs, from 1978 to 1983 with responsibilities on the drafting of legal proposals for the settlement of provincial boundary disputes.

Author of numerous publications on international law. Participated in numerous conferences and seminars on international law. Member of several academic law institutions.

Judge *ad hoc* Serge SUR

(Judge *ad hoc* in the case concerning *Questions relating to the Obligation to Prosecute or Extradite* (*Belgium* v. *Senegal*))

Born on 20 June 1944 in La Meauffe, France.

Professor in Public Law at the University of Paris II, Panthéon-Assas since 1989.

Licence in Law (1965), DES in Public Law (1967), DES in Political Science (1968) at the Faculte de droit et de sciences politiques, Caen; *Docteur d'Etat* in Law (1970), University of Caen; Holder of the *agrégation* in Public Law (1976).

Assistant Lecturer (1966) and subsequently Lecturer (1974) at the Faculte de droit et de sciences politiques, Caen; Professor of Public Law at the University of Rennes I (1977-1981) and at the University of Paris X-Nanterre, 1981-1989; Founder and Director of the Centre Thucydide – Analyse et recherche en relations internationales, University Panthéon-Assas (Paris II), (since 1999). In this context, regularly led research projects and international colloquia.

Senior Lecturer at the Ecole nationale d'administration (ENA), Paris, (1984-1988); Professor at the Institut des hautes etudes internationales (IHEI) of University Panthéon-Assas (Paris II) (1982-1986); Senior Lecturer in Public International Law at the Institut d'etudes politiques de Paris (IEP) (1980-1986); Responsible for the teaching of international law and international relations at the Centre de Préparation au Concours de l'ENA (CPENA), Rennes, (1977-1981).

Lecturer, Faculty of Law, University of Algiers (1970-1972), Guest Professor, Boston College Law School, Massachusetts (October 1984); Course at the summer session of the Institute of International Relations of Thessaloniki (September 1984); Guest Professor, University of Geneva (winter semester 1988-1989); Teaching assignments in Algeria, Benin, Central African Republic, Mauritania, Viet Nam.

Director of the *Annuaire français de relations internationales*, Bruylant, (since 1999) (publication awarded a prize by the Institut de France in 2008); Editor of the bi-monthly *Questions internationals: La documentation française* (since 2003); Member of the Editorial Board of the *Annuaire français de droit international* (since 2000).

Member of the panel for the first-level examination for ENA (1982); Member of the panel for the competitive examination for the position of Deputy Secretary at the French Ministry of Foreign Affairs (1983); Member of the panel for the second-level competitive examination for the *agrégation* in public law (2001-2002).

Founding Member and Co-Director of the Centre de droit international de Nanterre (CEDIN), (1981-1986); Member of the Board of the *Société française pour le droit international* (SFDI) (1994-2000; since 2004); Founding Member of the steering committee of the *Section d'etudes internationales de l'association française de science politique* (AFSP) (since October 1996).

Consultant to the French Ministry of Foreign Affairs (Legal Affairs Directorate; Department of Strategic Affairs, Security and Disarmament) (since 1984); Counsel to the French Government in the Netherlands-France Rhine Chlorides Arbitration (2001-2004).

Expert-Consultant to the Secretary-General of the United Nations on disarmament issues, New York, Geneva (1983-1984). Member (qualified public figure) of the Commission nationale pour l'élimination des mines antipersonnel (CNEMA) (2002-2010).

Deputy Director of the United Nations Institute for Disarmament Research (UNIDIR), Geneva, October 1986-July 1996. As such, supervised research and organized or participated in international scientific conferences in numerous countries in Africa, North and South America, Asia and Europe. Produced numerous publications within the framework of UNIDIR.

The Hague Academy of International Law: Director of Studies (public international law) (1964). Responsible for teaching a course in public verification on disarmament (1998); Director (French-speaking) of the Centre for Studies and Research (August 2006).

Publications relating to international law and international relations include, most notably, *L'interprétation en droit international public*, Paris, LGDJ, 1974; *Droit international public* (with J. Combacau), Précis Domat, 10th ed., 2012 (first edition awarded a prize by l'Institut de France, 1993); *La coutume internationale*, LITEC, 1990; *Relations internationales*, Précis Domat, 1995, 6th ed., 2011; "Le recours à la force dans l'affaire du Kosovo et le droit international", *Notes of the IFRI*, No. 22, 2000; *Le Conseil de sécurité dans l'après 11 septembre*, LGDJ, 2005; *International Law, Power, Security and Justice – Essays on International Law and Relations*, Hart Publishing, 2010; *Un monde en miettes: Les relations internationales à l'aube du XX^e siècle*, Paris, La documentation française, 2010; *Les dynamiques du droit international*, Paris, Pedone, 2012.

A selection of articles on law and international relations under the title *International Law, Power, Security and Justice – Essays on International Law and Relations*, Oxford and Portland, Oregon, Hart Publishing, 2010 (translated into English).

Has also published numerous works on the subject of French political life: *La vie politique en France sous la V^e République*, Précis Domat, 2nd ed., 1981; *Le Système politique de la V^e République*, PUF Que sais-je?, 4th ed., 1986; *2002: Elections abracadabrantesques*, Dalloz, 2002.

Judge *ad hoc* James L. KATEKA

(Judge *ad hoc* in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*)

Born on 25 April 1945 in Karagwe District, Tanzania.

Bachelor of Laws Degree with Honours, University College Dar es Salaam of the University of East Africa (1970); Master of Laws (specializing in international law), King's College, University of London (1974).

Judge at the International Tribunal for the Law of the Sea (ITLOS) (since 2005); Member of the United Nations International Law Commission (1997-2006); Vice-Chairman (2002), Chairman of the Drafting Committee (2003); Partner in the law firm of South Law Chambers, Dar es Salaam. Member of the American Society of International Law (since 2005); Member of the British Institute of International and Comparative Law (since 2006); Associate Member of the Institut de droit international (since 2009). Member, UNEP Group of Experts on Environmental Dispute Avoidance and Settlement (1998-1999); Member, UNEP Meeting of Experts on Liability and Compensation for Environmental Damage, Geneva (2002).

Legal Officer in the Protocol and Treaties Division (1970-1973), Ministry of Foreign Affairs of Tanzania; Head of the Legal Section (1973-1975); Legal Adviser, Tanzania Mission to the United Nations in New York (1976-1980); Head, Treaties Section of the MFA (1980-1983); Director (Legal Adviser), Legal Department of the MFA (1983-1989); Ambassador of Tanzania to the Federal Republic of Germany (1989-1994) with concurrent accreditation to Austria, the Holy See, Poland, Romania and Switzerland; Ambassador to the Russian Federation (1994-1998); Ambassador to Sweden (1998-2005) with concurrent accreditation to the other Nordic countries of Denmark, Finland, Norway and Iceland and to the Baltic Republics of Estonia, Latvia and Lithuania; Dean of the diplomatic corps, Stockholm (2003-2005); Dean of Tanzania's Ambassadors (2004-2005).

Deliberations, United Nations Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction (1971-1973); delegate to the Third United Nations Conference on the Law of the Sea (1973-1982); representative to the Sixth (Legal) Committee of the United Nations General Assembly (1976-1988 and 1996); delegate to the United Nations Preparatory Commission for the International Seabed Authority and the International Tribunal for the Law of the Sea in Kingston, Jamaica (1983-1994); delegate to the Stockholm Conference on the Human Environment (1972), London Conference on the Anti-Dumping Convention (1972), IMO Conference that adopted the Marine Pollution Convention (1973); head of delegation to the Diplomatic Conference on Territorial Asylum in Geneva (1977); delegate, Conference that adopted the Vienna Convention on Succession of States in respect of Treaties (1977-1978); delegate to the Nairobi Conference that adopted the Convention for the Protection, Management and Development of the Marine Environment of the Eastern African Region (1985); Member, UNEP Group of Experts on Environmental Dispute Avoidance and Settlement (1998-1999); participant, UNEP Meeting of Experts on Liability and Compensation for Environmental Damage, Geneva (2002); delegate, Commonwealth Heads of Government Meeting, New Delhi, (1983); United Nations Conference on Women, Nairobi (1985); twenty-fifth session of the Asian-African Legal Consultative Committee, Arusha, (1985); Acting Chairman, (1976) UN Sanctions Committee on Southern Rhodesia under Security Council resolution 253 (1968); Rapporteur, *Ad Hoc* Committee on International Terrorism (1977-1979); representative, Special Committee on the Charter, UNCITRAL, the *Ad Hoc* Committee on the Indian Ocean as a Zone of Peace, the *Ad Hoc* Committee against the Taking of Hostages, the Non-Use of Force Committee (1976-1980);

delegate to the First and Second Special Sessions of the United Nations General Assembly on Disarmament (1978 and 1982 respectively).

Numerous articles for various legal publications and lectures on international law covering the law of the sea, environmental law, human rights and the United Nations International Law Commission.

Publications include: "Advisory Proceedings before the Seabed Disputes Chamber and before the ITLOS as a Full Court", *Max Planck Yearbook of United Nations Law*; "Protection and Preservation of the Marine Environment in the Area under UNCLOS" in *Coexistence, Co-operation and Solidarity – Liber Amicorum Rüdiger Wolfrum*, edited by Holger P. Hestermeyer, Doris König, Nele Matz-Lück, Volker Röben, Anja Seibert-Fohr, Peter-Tobias Stoll and Silja Vöneky; "Diplomatic Protection", *The Protection of the Individual in International Law – Essays in Honour of John Dugard*, Thomas Skouteris and Annemarieke Vermeer-Künzli (eds.); "Landlocked Developing Countries and the Law of the Sea", *International Law between Universalism and Fragmentation-Festschrift in Honour of Gerhard Hafner*, Isabelle Buffard, James Crawford, Alain Pellet and Stephan Wittich (eds.); "The Forty-Ninth Session of the United Nations International Law Commission", *African Yearbook of International Law* (*AYIL*), Vol. 5, 1997; "The Fiftieth Session of the ILC", *AYIL*, Vol. 6, 1998; "The Fifty-First Session of the ILC", *AYIL*, Vol. 7, 1999; "The Fifty-Second Session of the ILC", *AYIL*, Vol. 8, 2000; "The Fifty-Third Session of the ILC", *AYIL*, Vol. 9, 2001; "The Tanzania National Report", in *Legal Aspects of Protecting and Managing the Marine and Coastal Environment of the Eastern African Region, UNEP Regional Seas Reports*, No. 49, 1984; Paper presented at the International Seminar on the Experience of Different Countries in the Implementation of International Standards on Human Rights, Geneva, 20 June-1 July 1983, published in UN doc. HR/GENEVA/1983/WP.23.

Awarded the Papal Honour of the Grand Cross with the Star of the Order of Pius the Ninth in 1993 by Pope John Paul II.

Judge *ad hoc* Philippe KIRSCH, QC

(Judge *ad hoc* in the case concerning *Questions relating to the Obligation to Prosecute or Extradite* (*Belgium* v. *Senegal*))

Born in Namur, Belgium, on 1 April 1947.

Master's of Law, Université de Montréal, 1972. Member of the Bar of the Province of Quebec since 1970. Honorary Doctorates of Laws from Université de Montreal, Université du Québec à Montreal, University of Ottawa, National University of Ireland and Odessa National Academy of Laws. Queen's Counsel (since 1988). Chair of the Independent International Commission of Inquiry established by the United Nations Human Rights Council to investigate violations of human rights in Libya (2011-2012). Member of the Bahrain Independent Commission of Inquiry (2011). Member of the fact-finding mission sent to Burma/Myanmar by the Human Rights Institute of the International Bar Association.

President of the International Criminal Court, and Judge on its Appeals Chamber, 2003-2009. Chairman of the Preparatory Commission for the International Criminal Court, 1999-2002. Chairman of the Committee of the Whole of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, 1998.

Legal Adviser, Department of Foreign Affairs and International Trade, Ottawa (DFAIT), 1994-1999. Director General, Bureau of Legal Affairs, DFAIT, 1992-1994. Director, Legal Operations Division, Department of External Affairs, Ottawa, 1983-1988.

Ambassador and Agent for Canada before the International Court of Justice in the *Legality of Use of Force* case, 1999-2003, and the *Fisheries Jurisdiction* case, 1995-1998. Member of the Permanent Court of Arbitration, 1995-1999. Ambassador and Agent for Canada in the *Dispute concerning Filleting within the Gulf of St. Lawrence*, 1985-1986. Head of delegation under the Canada-United States Free Trade Agreement, 1993.

Ambassador of Canada to the Kingdom of Sweden, 1999-2003; Ambassador and Deputy Permanent Representative of Canada to the United Nations, New York, 1988-1992.

Chairman or President of various UN bodies, such as: *Ad Hoc* Committee for the Suppression of Acts of Terrorism; 1997-1999; *Ad Hoc* Committee for the Convention on the Safety of United Nations and Associated Personnel, 1993-1994; International Conference on Air Law for the drafting of a Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988); Committee of the Whole of the International Conference on the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988); UN General Assembly's Sixth (Legal) Committee 1982-1983; Committee on Application for Review of UN Administrative Tribunal Judgments; Working Group of Experts on the Protection of the Marine Environment against Marine Pollution from Land-Based Sources, United Nations Environment Programme, 1983-1985. Representative of Canada to numerous bodies and conferences of the UN and other international organizations.

Member of the Group of International Advisers to the International Committee of the Red Cross (ICRC), 2000-2003. Chairman of the Canadian National Committee on Humanitarian Law, 1998-1999. Chairman of a number of conferences and meetings under the auspices of the Red Cross and Red Crescent Movement and the ICRC, 1993-1999.

Author of more than fifty articles and book contributions, and numerous speeches and lectures on international criminal justice and various subjects of international law and international relations. Member of several boards of advisers and editing boards.

Judge *ad hoc* Milenko KRECA

(Judge *ad hoc* in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Croatia* v. *Serbia*))

Born in Sisak, Croatia, on 19 August 1947. Serbian national.

Received M.A. and Ph.D. (LL.D.) Degrees *cum laude* from the School of Law, Belgrade University.

Upon graduation, practised law as an attorney (1973-1974).

Assistant Professor (1975), Docent (1978) and Associate Professor (1985) at the Belgrade School of Law. Full-time Professor of International Public Law (1990) and Associate Dean (1989-1991) at the Belgrade School of Law. Head of Chair of International Law and International Relations at the Faculty of Law in Belgrade (since 1997); Director of the Institute for International Politics and Economics (1997-2000); President of the Council of the Institute for Comparative Law (1997-2000); Member of the Federal Commission for Harmonization of FRY Law with the Laws of EU, EC and WTO (since 1998); Member of the Board of the Faculty of Law in Belgrade (1998-2000); President of the Council of the Faculty of Law (since 2006).

Arbitrator of the Permanent Arbitration at the Commercial Chamber of the Republic of Serbia (since 2000); President of the Scientific Council for Legal and Political Sciences at Belgrade University (1999-2004). President of the International Criminal Law Association (since 2002). Director of the Institute for Legal Studies, Faculty of Law, Belgrade.

Was on several occasions legal adviser to the Ministry of Foreign Affairs and Government of the Federal Republic of Yugoslavia and to other organs of the Republic of Serbia and the Federal Republic of Yugoslavia. Judge *ad hoc* in a few cases before the European Court of Human Rights.

Judge *ad hoc* before the International Court of Justice in the following cases: *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina* v. *Serbia and Montenegro*), *Legality of Use of Force* (*Serbia and Montenegro* v. *Belgium*) (*Serbia and Montenegro* v. *Canada*) (*Serbia and Montenegro* v. *France*) (*Serbia and Montenegro* v. *Germany*) (*Serbia and Montenegro* v. *Italy*) (*Serbia and Montenegro* v. *Netherlands*) (*Serbia and Montenegro* v. *Portugal*) (*Serbia and Montenegro* v. *Spain*) (*Serbia and Montenegro* v. *United Kingdom*) (*Serbia and Montenegro* v. *United States of America*).

Judge *ad hoc* in a number of cases before the European Court of Human Rights.

Founder of the *Review of EU Legislation* (Belgrade, Institute for International Politics and Economics).

Principal publications: *Practical Course in International Law* (co-author), 1980; *International Public Law* (co-author), 1983, 1986, 1989, 1990, 1991, 1993, 1996, 1997, 1999, 2001, 2003, 2004; *Sources of International Public Law*, 1979, 1985, 1999, 2004; *Treaty-Making Power of the State in International Law, with a Special Review of Federal States*, 1988; *Absolutely Binding Norms* (*Ius Cogens*) *in International Public Law*, 1989; *Material for*

International Public Law, I-III (co-author), 1988-1989; *Law of the Sea – Scientific Research of the Sea and Transfer of Marine Technology*, 1990; *Treaty-Making Power of the State in International Law*, 1991. Author of over 80 articles and papers in Serbian and other languages, including: "Some General Reflections on Main Features of *Ius Cogens* as a Notion of International Public Law", in *New Directions in International Law, Essays in Honour of W. Abendroth*, 1982; "Quelques observations sur le problème de la hiérarchie des règles de droit dans le droit international public", in *Yugoslav Review of International Law*, No. 1, 1980; "Constitutional Provisions Regulating Activity of Federal Units in International Relations", in *Yugoslav Review of International Law*, No. 1, 1992; "A Few Remarks on Theoretical Basis of the New Law of the Sea", *Liber Amicorum Judge Shigeru Oda*.

Judge *ad hoc* Hilary Charlesworth

(Judge *ad hoc* in the case concerning *Whaling in the Antarctic (Australia* v. *Japan)*)

Born in Leuven, Belgium, on 28 February 1955.

B.A. (Honours); LL.B. (Honours), University of Melbourne (1980); Doctor of Juridical Science, Harvard Law School (1986).

Professor of International Law and Human Rights and Director, Centre for International Governance and Justice, Australian National University; Australian Research Council Laureate Fellow.

Barrister and Solicitor of the High Court of Australia and the Supreme Court of Victoria (1981).

Teacher, Mayo College, Ajmer, India (1976); Tutor in Trade Practices Law, Ormond College, University of Melbourne (1980); Articled Clerk, Gillotts, Melbourne (1980); Associate to Justice Ninian Stephen, High Court of Australia (1981-1982); Human Rights Fellow, United Nations High Commissioner for Refugees, Geneva (June-Sept 1983); Foreign Associate, Sullivan & Cromwell, New York (1985-1986); Lecturer, Law School, University of Melbourne (1987-1990); Senior Lecturer, Law School, University of Melbourne (1990-1992); Commissioner (part-time), Australian Law Reform Commission (1993-1994); John Bray Professor, Law School, University of Adelaide (1993-1996); Hearing Commissioner, Human Rights and Equal Opportunity Commission (1994-1999); Professor and Director of the Centre for International and Public Law, Faculty of Law, Australian National University (1998-2004); Professor, Regulatory Institutions Network, College of Asia and the Pacific and Professor of International Law and Human Rights, College of Law, Australian National University (2004-); Australian Research Council Federation Fellow (2005-2010); Director, Centre for International Governance and Justice (2005-); Head of Program, RegNet and Director, School of Regulation, Justice and Diplomacy (2008-2010); Australian Research Council Laureate Fellow (2010-).

Visiting Lecturer, College of Law, University of Tennessee, Knoxville (1984); Adjunct Professor, Northeastern University School of Law, Boston (1984); Frances Lewis Scholar in Residence, Washington and Lee

Law School, Lexington, Virginia (1999); Manley O. Hudson Visiting Professor of International Law, Harvard Law School (2001); Member, Global Law Faculty, New York University (2002); Wayne Morse Professor, University of Oregon (2005); Sir Ninian Stephen Fellow, Asia-Pacific Centre for Military Law, University of Melbourne (2005); Visiting Professor, Université de Paris (Paris I) (2007); Visiting Professor, UCLA Law School (2009); James J. Coleman Sr. Distinguished Visiting Professor of Law, Tulane Law School (2012).

Occasional Lecturer at University of Helsinki International Law Summer School (August 1999); Aristotle University of Thessaloniki, International Law Summer School (September 2004); University of Otago, Dunedin, International Relations Winter School (June 2005); Hague Academy of International Law (August 2010); Institute for Global Law and Policy, Harvard Law School, Summer School (May 2011).

Member, Advisory Board, *Australian Feminist Law Journal* (1993-); Member, Editorial Board, Cambridge Studies in International and Comparative Law (Cambridge University Press) (1994-); Member, Board of Editors of the *American Journal of International Law* (1999-2009); Co-editor, *Australian Year Book of International Law* (1996-2006); Member, Honorary Advisory Board, *Melbourne Journal of International Law* (2000-); Member, Advisory Board, *Leiden Journal of International Law* (2000-); Member, Advisory Board, *New Zealand Journal of Public and International Law* (2003-); Member, Editorial Board, *International Theory* (2008-); Member, International Board of Advisers, *City University of Hong Kong Law Review* (2009-); Member, Editorial Board, *Law and Society Review* (2009-); Member, Editorial Board, *Nordic Journal of Human Rights* (2010-); Member, Editorial Board, *Asian Journal of International Law* (2010-); Member, Editorial Board, *Humanity* (2012-).

Member, International Law Association Committee on Gender and International Law (1993-2006); President, Australian and New Zealand Society of International Law (1998-2002); Counsellor, American Society of International Law (2000-2005); Patron, ACT Women's Legal Service (2002-); Chair: ACT Bill of Rights Consultative Committee (2002-2003); Member, International Advisory Board, MIT Program on Human Rights and Justice (2002-); Member, Gender Justice Advisory Board, The Hague (2003-); Member, Advisory Committee, Diplomacy Training Program, UNSW (2003-); Member, College of Experts, Australian Research Council (2004-2007); Patron, Victorian Foundation for the Survivors of Torture (2007-); Chair, Inaugural Prime Minister's Literary Awards (non-fiction) (2008); Member, Advisory Council, Center on Law and Globalization, American Bar Foundation and University of Illinois College of Law (2008); Member, Australian Co-operative Research Centres Committee (2009-2011); Member, Executive Council, Asian Society of International Law (2009-2011); Patron, Lawyers without Borders (2009-); Member, Australian Group, Permanent Court of Arbitration (2009-); Member, Academic Council, Institute for Global

Law and Policy, Harvard Law School (2009-); Member, Australian-American Fulbright Commission Board (2011); Associate Member, Institut de droit international (2011-).

Fulbright Scholarship; Frank Knox Memorial Harvard Scholarship; R. G. Menzies Scholarship to Harvard (1982-1985); Australian Federation of University Women Fellowship (1985); Francis Deák Prize, American Society of International Law (co-winner) (1992); Certificate of Merit of the American Society of International Law for "preeminent contribution to creative scholarship" for *The Boundaries of International Law* (with C. M. Chinkin) (2001); Fellow, Australian Academy of Social Sciences (2002); Australian Research Council Federation Fellowship (2005-2010); Goler T. Butcher Medal awarded by the American Society of International Law for "outstanding contributions to the development or effective realization of international human rights law" (with C. M. Chinkin) (2006); Member of the Order of Australia (2007); Honorary Fellow, Australian Institute of International Affairs (2009); Australian Research Council Laureate Fellowship (2010-2015) (2010).

Has published numerous books, book chapters and articles on public international law.

CHAPTER III

JURISDICTION OF THE COURT

I. Jurisdiction in Contentious Cases

It is the function of the International Court of Justice to decide in accordance with international law such disputes as are submitted to it (Statute, Art. 38, para. 1). Its jurisdiction in this respect is defined in Article 93 of the Charter of the United Nations and in Articles 34-37 of the Statute of the Court.

1. States Entitled to Appear before the Court

Article 34, paragraph 1, of the Statute provides that: "Only States may be parties in cases before the Court." International organizations, other collectivities and private persons are therefore not entitled to institute proceedings before the International Court of Justice.

A State entitled to appear before the Court may fall into one of the three categories listed below.

(a) States Members of the United Nations

Article 35, paragraph 1, of the Statute provides that the Court shall be open to the States parties to the Statute.

Article 93, paragraph 1, of the Charter of the United Nations provides that all Members of the United Nations are *ipso facto* parties to the Statute.

On 31 July 2012 the following 193 States were Members of the United Nations and thus *ipso facto* parties to the Statute. In the list of States reproduced below, original Members are marked with asterisks. Members who have also signed declarations recognizing as compulsory the jurisdiction of the Court are italicized.

No additional States have joined the United Nations during the period currently under review.

State	*Date of Admission*
Afghanistan	19 November 1946
Albania	14 December 1955
Algeria	8 October 1962
Andorra	28 July 1993
Angola	1 December 1976
Antigua and Barbuda	11 November 1981
*Argentina	24 October 1945

State	*Date of Admission*
Armenia	2 March 1992
**Australia*	*1 November 1945*
Austria	14 December 1955
Azerbaijan	2 March 1992
Bahamas	18 September 1973
Bahrain	21 September 1971
Bangladesh	17 September 1974
Barbados	*9 December 1966*
*Belarus	24 October 1945
**Belgium*	*27 December 1945*
Belize	25 September 1981
Benin	20 September 1960
Bhutan	21 September 1971
*Bolivia	14 November 1945
Bosnia and Herzegovina	22 May 1992
Botswana	17 October 1966
*Brazil	24 October 1945
Brunei Darussalam	21 September 1984
Bulgaria	14 December 1955
Burkina Faso	20 September 1960
Burundi	18 September 1962
Cambodia	14 December 1955
Cameroon	20 September 1960
**Canada*	*9 November 1945*
Cape Verde	16 September 1975
Central African Republic	20 September 1960
Chad	20 September 1960
*Chile	24 October 1945
*China	24 October 1945
*Colombia	5 November 1945
Comoros	12 November 1975
Congo	20 September 1960
**Costa Rica*	*2 November 1945*
Côte d'Ivoire	20 September 1960
Croatia	22 May 1992
*Cuba	24 October 1945
Cyprus	20 September 1960
Czech Republic	19 January 1993
Democratic People's Republic of Korea	17 September 1991
Democratic Republic of the Congo	20 September 1960
**Denmark*	*24 October 1945*
Djibouti	20 September 1977
Dominica	*18 December 1978*

State	*Date of Admission*
**Dominican Republic*	*24 October 1945*
*Ecuador	21 December 1945
**Egypt*	*24 October 1945*
*El Salvador	24 October 1945
Equatorial Guinea	12 November 1968
Eritrea	28 May 1993
Estonia	17 September 1991
*Ethiopia	13 November 1945
Fiji	13 October 1970
Finland	14 December 1955
*France	24 October 1945
Gabon	20 September 1960
Gambia	21 September 1965
Georgia	31 July 1992
Germany	18 September 1973
Ghana	8 March 1957
**Greece*	*25 October 1945*
Grenada	17 September 1974
*Guatemala	21 November 1945
Guinea	12 December 1958
Guinea-Bissau	17 September 1974
Guyana	20 September 1966
**Haiti*	*24 October 1945*
**Honduras*	*17 December 1945*
Hungary	14 December 1955
Iceland	19 November 1946
**India*	*30 October 1945*
Indonesia	28 September 1950
*Iran (Islamic Republic of)	24 October 1945
*Iraq	21 December 1945
Ireland	14 December 1955
Israel	11 May 1949
Italy	14 December 1955
Jamaica	18 September 1962
Japan	18 December 1956
Jordan	14 December 1955
Kazakhstan	2 March 1992
Kenya	16 December 1963
Kiribati	14 September 1999
Kuwait	14 May 1963
Kyrgyzstan	2 March 1992
Lao People's Democratic Republic	14 December 1955
Latvia	17 September 1991
*Lebanon	24 October 1945

State	*Date of Admission*
Lesotho	17 October 1966
**Liberia*	*2 November 1945*
Libyan Arab Jamahiriya	14 December 1955
Liechtenstein	18 September 1990
Lithuania	17 September 1991
**Luxembourg*	*24 October 1945*
Madagascar	20 September 1960
Malawi	1 December 1964
Malaysia	17 September 1957
Maldives	21 September 1965
Mali	28 September 1960
Malta	1 December 1964
Marshall Islands	17 September 1991
Mauritania	27 October 1961
Mauritius	24 April 1968
**Mexico*	*7 November 1945*
Micronesia (Federated States of)	17 September 1991
Monaco	28 May 1993
Mongolia	27 October 1961
Montenegro	28 June 2006
Morocco	12 November 1956
Mozambique	16 September 1975
Myanmar	19 April 1948
Namibia	23 April 1990
Nauru	14 September 1999
Nepal	14 December 1955
**Netherlands*	*10 December 1945*
**New Zealand*	*24 October 1945*
**Nicaragua*	*24 October 1945*
Niger	20 September 1960
Nigeria	7 October 1960
**Norway*	*27 November 1945*
Oman	7 October 1971
Pakistan	30 September 1947
Palau	15 December 1994
**Panama*	*13 November 1945*
Papua New Guinea	10 October 1975
**Paraguay*	*24 October 1945*
**Peru*	*31 October 1945*
**Philippines*	*24 October 1945*
**Poland*	*24 October 1945*
Portugal	14 December 1955
Qatar	21 September 1971

State	*Date of Admission*
Republic of Korea	17 September 1991
Republic of Moldova	2 March 1992
Romania	14 December 1955
*Russian Federation	24 October 1945
Rwanda	18 September 1962
Saint Kitts and Nevis	23 September 1983
Saint Lucia	18 September 1979
Saint Vincent and the Grenadines	16 September 1980
Samoa	15 December 1976
San Marino	2 March 1992
São Tomé and Principe	16 September 1975
*Saudi Arabia	24 October 1945
Senegal	28 September 1960
Serbia	1 November 2000
Seychelles	21 September 1976
Sierra Leone	27 September 1961
Singapore	21 September 1965
Slovakia	19 January 1993
Slovenia	22 May 1992
Solomon Islands	19 September 1978
Somalia	20 September 1960
*South Africa	7 November 1945
South Sudan	14 July 2011
Spain	14 December 1955
Sri Lanka	14 December 1955
Sudan	12 November 1956
Suriname	4 December 1975
Swaziland	24 September 1968
Sweden	19 November 1946
Switzerland	10 September 2002
*Syrian Arab Republic	24 October 1945
Tajikistan	2 March 1992
Thailand	16 December 1946
the former Yugoslav Republic of Macedonia	8 April 1993
Timor-Leste	27 September 2002
Togo	20 September 1960
Tonga	14 September 1999
Trinidad and Tobago	18 September 1962
Tunisia	12 November 1956
*Turkey	24 October 1945
Turkmenistan	2 March 1992
Tuvalu	5 September 2000
Uganda	25 October 1962

State	*Date of Admission*
*Ukraine	24 October 1945
United Arab Emirates	9 December 1971
**United Kingdom of Great Britain and Northern Ireland*	*24 October 1945*
United Republic of Tanzania	14 December 1961
*United States of America	24 October 1945
**Uruguay*	*18 December 1945*
Uzbekistan	2 March 1992
Vanuatu	15 September 1981
*Venezuela	15 November 1945
Viet Nam	20 September 1977
Yemen	30 September 1947
Zambia	1 December 1964
Zimbabwe	25 August 1980

(b) *States, not members of the United Nations, parties to the Statute*[1]

Article 93, paragraph 2, of the Charter of the United Nations provides that States which are not members of the United Nations may become parties to the Statute of the Court on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council. Japan (as from 2 April 1954), Liechtenstein (as from 29 March 1950), San Marino (as from 18 February 1954), Nauru (as from 29 January 1988) and Switzerland (as from 28 July 1948), fell into this category before joining the United Nations.

The conditions imposed have hitherto been the same in each case. They were laid down for the first time as a result of a request by the Swiss Federal Council[2].

The date on which the State concerned becomes a party to the Statute is that of the deposit with the Secretary-General of the United Nations of the instrument of acceptance of the above-mentioned conditions.

Pursuant to Article 4, paragraph 3, of the Statute, such States may participate in the election of Members of the Court under the conditions laid down in resolution 264 (III) adopted by the General Assembly, upon the recommendation of the Security Council, on 8 October 1948. The operative part of this resolution states that:

> "1. Such a State shall be on an equal footing with the Members of the United Nations in respect to those provisions of the Statute which regulate the nominations of candidates for election by the General Assembly.

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[1] The full text of the resolution referred to in this Section is given on pages 185-189 of *I.C.J. Acts and Documents No. 6*.

[2] On that occasion the General Assembly, on 11 December 1946, adopted resolution 91 (I), the full text of which can be found on the website of the United Nations at: http://www.un.org/documents/ga/res/1/ares1.htm).

2. Such a State shall participate, in the General Assembly, in electing the Members of the Court in the same manner as the Members of the United Nations.

3. Such a State, when in arrears in the payment of its contribution to the expenses of the Court, shall not participate in electing the Members of the Court in the General Assembly if the amount of its arrears equals or exceeds the amount of the contribution due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a State to participate in the elections if it is satisfied that the failure to pay is due to conditions beyond the control of that State (see Charter, Art.19)."

The participation of such States in the procedure for amending the Statute of the Court (Charter, Art. 108; Statute, Art. 69) is governed by the following provisions of resolution 2520 (XXIV) adopted by the General Assembly, upon the recommendation of the Security Council, on 4 December 1969:

> "*(a)* A State which is a party to the Statute of the International Court of Justice, but is not a Member of the United Nations, may participate in the General Assembly in regard to amendments to the Statute in the same manner as the Members of the United Nations;
>
> *(b)* Amendments to the Statute of the International Court of Justice shall come into force for all States which are parties to the Statute when they have been adopted by a vote of two-thirds of the States which are parties to the Statute and ratified in accordance with their respective constitutional processes by two-thirds of the States which are parties to the Statute and in accordance with the provisions of Article 69 of the Statute and Article 108 of the Charter of the United Nations."

(c) *States, not parties to the Statute, to which the Court may be open*

The Court, which is open to States parties to the Statute, as mentioned above, is also open to other States, in accordance with Article 35, paragraph 2, of the Statute[1]. This Article provides that the conditions upon which the Court shall be open to such States shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

On 15 October 1946, the Security Council adopted resolution 9 (1946) which reads as follows:

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[1] See also Rules, Art. 26, para. 1 *(c)*, and Art. 41.

"The Security Council,

In virtue of the powers conferred upon it by Article 35, paragraph 2, of the Statute of the International Court of Justice and subject to the provisions of that Article,

Resolves that:

1. The International Court of Justice shall be open to a State which is not a party to the Statute of the International Court of Justice, upon the following condition, namely, that such State shall previously have deposited with the Registrar of the Court a declaration by which it accepts the jurisdiction of the Court, in accordance with the Charter of the United Nations and with the terms and subject to the conditions of the Statute and Rules of the Court, and undertakes to comply in good faith with the decision or decisions of the Court and to accept all the obligations of a Member of the United Nations under Article 94 of the Charter;

2. Such declaration may be either particular or general. A particular declaration is one accepting the jurisdiction of the Court in respect only of a particular dispute or disputes which have already arisen. A general declaration is one accepting the jurisdiction generally in respect of all disputes or of a particular class or classes of disputes which have already arisen or which may arise in the future. A State, in making such a general declaration, may, in accordance with Article 36, paragraph 2, of the Statute, recognize as compulsory, *ipso facto* and without special agreement, the jurisdiction of the Court, provided, however, that such acceptance may not, without explicit agreement, be relied upon vis-à-vis States parties to the Statute which have made the declaration in conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice;

3. The original declarations made under the terms of this resolution shall be kept in the custody of the Registrar of the Court, in accordance with the practice of the Court. Certified true copies thereof shall be transmitted, in accordance with the practice of the Court, to all States parties to the Statute of the International Court of Justice, and to such other States as shall have deposited a declaration under the terms of this resolution, and to the Secretary-General of the United Nations;

4. The Security Council reserves the right to rescind or amend this resolution by a resolution which shall be communicated to the Court, and on the receipt of such communication and to the extent determined by the new resolution, existing declarations shall cease to be effective except in regard to disputes which are already before the Court;

5. All questions as to the validity or the effect of a declaration made under the terms of this resolution shall be decided by the Court."

Such declarations have been filed by Albania (1947) and by Italy (1953), and general declarations by Cambodia (1952), Ceylon (1952), the Federal Republic of Germany (1955, 1956, 1961, 1965 and 1971), Finland (1953 and 1954), Italy (1955), Japan (1951), Laos (1952) and the Republic of Viet Nam (1952).

2. Basis of the Court's Jurisdiction

The jurisdiction of the Court in contentious proceedings is based on the consent of the States to which it is open. The form in which this consent is expressed determines the manner in which a case may be brought before the Court. The Court is competent to entertain a dispute only if the States concerned have accepted its jurisdiction in the following ways:

(a) *Special agreement*

Article 36, paragraph 1, of the Statute provides that the jurisdiction of the Court comprises all cases which the parties refer to it. Such cases normally come before the Court by notification to the Registry of an agreement known as a *special agreement* and concluded by the parties specially for this purpose. To date seventeen such cases have been submitted to the Court (for the list of these cases see Annex 6, p. 283).

(b) *Cases provided for in treaties and conventions*

Article 36, paragraph 1, of the Statute provides also that the jurisdiction of the Court comprises all matters specially provided for in treaties and conventions in force. Over 300 treaties and conventions contain a clause to that effect. In such cases, a matter is normally brought before the Court by means of a written *application instituting proceedings*; this is a unilateral document which must indicate the subject of the dispute and the parties (Statute, Art. 40, para. 1) and, as far as possible, specify the provision on which the applicant founds the jurisdiction of the Court (Rules, Art. 38). With the exception of the cases which were brought by the notification of a special agreement, all contentious cases have been brought before the Court by means of an application instituting proceedings, irrespective of whether the Court's jurisdiction was founded on a provision in a treaty or convention, declarations recognizing the Court's jurisdiction as compulsory made by each of the parties to the dispute, or any other alleged form of consent.

The chronological list of treaties and other instruments *notified to the Registry* following registration, classification or recording at the Secretariat of the United Nations which (in addition to certain texts referred to in Section I of the present Chapter, the declarations mentioned in Section II and the special agreements whereby particular cases were submitted to the Court) contain clauses relating to the jurisdiction of the Court in contentious proceedings can be found on the website of the Court under the heading: "Jurisdiction/Contentious Jurisdiction/Declarations Recognising the Jurisdictions of the Court as Compulsory".

These instruments include treaties and conventions concluded earlier and conferring jurisdiction upon the *Permanent Court of International Justice* (*PCIJ*). For Article 37 of the Statute of the International Court of Justice stipulates that whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the PCIJ, the matter shall, as between the parties to the Statute, be referred to the International Court of Justice. The PCIJ reproduced, in 1932, in its *Collection of Texts Governing the Jurisdiction of the Court* (*P.C.I.J., Series D, No. 6*, fourth edition) and subsequently in Chapter X of its *Annual Reports* (*P.C.I.J., Series E, Nos. 8-16*) the relevant provisions of the instruments governing its jurisdiction. By virtue of the Article referred to above, some of these provisions now govern the jurisdiction of the International Court of Justice.

(c) *Declarations recognizing the jurisdiction of the Court*

The Statute provides that a State may recognize as compulsory, in relation to any other State accepting the same obligation, the jurisdiction of the Court in legal disputes. These cases are brought before the Court by means of written applications. The conditions on which such compulsory jurisdiction may be recognized are stated in paragraphs 2-5 of Article 36 of the Statute, which reads as follows:

> "2. The States parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:
>
> (*a*) the interpretation of a treaty;
>
> (*b*) any question of international law;
>
> (*c*) the existence of any fact which, if established, would constitute a breach of an international obligation;
>
> (*d*) the nature or extent of the reparation to be made for the breach of an international obligation.
>
> 3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain States, or for a certain time.
>
> 4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.
>
> 5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms."

The list of declarations recognizing as compulsory the jurisdiction of the Court (under Article 36, paragraph 2, of the Statute) can be found on the website of the Court under the heading: "Jurisdiction/Contentious Jurisdiction/Declarations recognizing the jurisdiction of the Court as compulsory".

As at 31 July 2012, a total of 67[1] such declarations have been deposited. Only declarations filed during the period under review are reproduced in the *I.C.J. Yearbook*. On 15 December 2011, Ireland deposited a declaration, the text of which is reproduced below:

IRELAND

15 XII 2011.

Ireland hereby declares that it recognises as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes as specified in Article 36, paragraph 2, with the exception of any legal dispute with the United Kingdom of Great Britain and Northern Ireland in regard to Northern Ireland.

The present declaration shall take effect from the date of its receipt by the Secretary-General of the United Nations.

The Government of Ireland reserves the right at any time, by means of a notification addressed to the Secretary-General of the United Nations and with effect from the date of such notification, either to amend or withdraw the present declaration; or to add to, amend or withdraw the foregoing reservation or any other reservations which may subsequently be made.

Dublin, 8 December 2011.

(*Signed*) Eamon GILMORE, T.D.,
Tánaiste and Minister for Foreign Affairs
and Trade.

In view of the provisions of Article 36, paragraph 5, of the Statute of the International Court of Justice, the website also contains the texts of declarations made under the Statute of the *Permanent Court of International Justice*, which have not lapsed or been withdrawn. There are now six such declarations.

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[1] Since 1951, 15 other declarations relating to the jurisdiction of the International Court of Justice, either expressly or by virtue of Article 36, paragraph 5, of the Statute, have expired, been withdrawn or been terminated without being subsequently replaced. These were the declarations of the following States: Bolivia, Brazil, China, Colombia, El Salvador, France, Guatemala, Iran, Israel, Nauru (United Nations, *Treaty Series*, Vol. 1491, p. 199), Serbia and Montenegro (United Nations, *Treaty Series*, Vol. 2121, p. 422), South Africa, Thailand, Turkey and the United States.

(d) Forum prorogatum

If a State has not recognized the jurisdiction of the Court at the time when an application instituting proceedings is filed against it, that State has the possibility of accepting such jurisdiction subsequently to enable the Court to entertain the case (Rules, Art. 38, para. 5; see the website of the Court under the heading: "Jurisdiction"); the Court thus has jurisdiction as of the date of acceptance in virtue of the rule of *forum prorogatum*.

As such, Article 38, paragraph 5, was invoked in 11 Applications. For the list of these Applications see Annex 7 (B), p. 285.

Prior to the present Rules of Court coming into force on 1 July 1978, the Court found, in eight cases, that it could take no further steps upon the Applications because the opposing party did not accept its jurisdiction. For the list of these cases see Annex 7 (A), p. 284.

The rule of *forum prorogatum* was applied, after the acceptance of the Court's jurisdiction by the respondent party, in the following two cases: in April 2003 in the case concerning *Certain Criminal Proceedings (Republic of the Congo* v. *France)* and in August 2006 in the case concerning *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti* v. *France)*. For additional information regarding these cases see Annex 8, p. 286.

(e) *Remarks concerning jurisdiction*

(i) The Court itself decides any question as to its jurisdiction

Article 36, paragraph 6, of the Statute provides that in the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court. Article 79 of the Rules lays down the conditions which govern the filing of preliminary objections[1].

(ii) Jurisdiction of the Court after a judgment

1. Interpretation of a judgment

Article 60 of the Statute provides that in the event of dispute as to the meaning or scope of a judgment, the Court shall construe it upon the request of any party. The request for interpretation may be made either by means of a special agreement between the parties or of an application by one or more of the parties (Rules, Art. 98). Requests for interpretations of judgments of the Court were made on five occasions. For the list of these requests, see below, Annex 9, p. 287.

2. Revision of a judgment

An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such party's ignorance was not due to negligence (Statute, Art. 61, para. 1). A request for revision is made by means of an application (Rules, Art. 99). Applications for revision of judgments of the Court were filed on three occasions. For the list of these applications see Annex 10, p. 288.

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[1] See below, Chap. IV, Sec. III, Part *(e)*, p. 145.

II. ADVISORY JURISDICTION

The advisory jurisdiction of the Court is governed by Article 65 of the Statute and Article 96 of the Charter of the United Nations.

By virtue of Article 65 of the Statute, the Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request. An exact statement of the questions upon which the advisory opinion is asked must be contained in a *request for an advisory opinion*. Article 96, paragraph 1, of the Charter provides that advisory opinions may be asked of the Court by the General Assembly or the Security Council on any legal question. Paragraph 2 of this Article adds:

> "Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities."

The following organs and agencies are at present authorized to request advisory opinions[1]:

United Nations:

General Assembly

The General Assembly has requested 15 advisory opinions of the Court. For the list of these proceedings see Annex 11, p. 289.

Security Council

The Security Council requested an advisory opinion of the Court concerning the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*.

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[1] The International Refugee Organization, which had been authorized to request advisory opinions of the Court, ceased to exist in 1952. The Havana Charter for an International Trade Organization, which provides for the jurisdiction of the Court in proceedings in regard to advisory opinions, has not entered into force.

Economic and Social Council

The Economic and Social Council requested an advisory opinion of the Court on two occasions: *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations* and *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*.

Trusteeship Council;
Interim Committee of the General Assembly;
International Labour Organization;
Food and Agriculture Organization of the United Nations;
United Nations Educational, Scientific and Cultural Organization

The Executive Board of UNESCO requested an advisory opinion of the Court concerning *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against Unesco*;

World Health Organization

The World Health Assembly requested an advisory opinion of the Court on two occasions: *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt* and *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*;

International Bank for Reconstruction and Development;
International Finance Corporation;
International Development Association;
International Monetary Fund;
International Civil Aviation Organization;
International Telecommunication Union;
International Fund for Agricultural Development

The International Fund for Agricultural Development requested an advisory opinion on *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development*;

World Meteorological Organization;
International Maritime Organization

The Assembly of this organization requested an advisory opinion of the Court concerning the *Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization*;

World Intellectual Property Organization;
United Nations Industrial Development Organization;
International Atomic Energy Agency.

References to the instruments by virtue of which such requests may be submitted by the above organs and agencies can be found below.

III. TEXTS GOVERNING THE JURISDICTION OF THE COURT

This Section is compiled from the information available to the Registry. It takes into account, so far as the Registry is informed of them, any amendments to those instruments which have affected their provisions concerning the jurisdiction of the Court. The inclusion or omission of any instrument should not be regarded as an indication of any view entertained by the Registry, or *a fortiori* by the Court, regarding the nature, scope or validity of the instrument in question.

Instruments Governing the Relationship of Organs of the United Nations and International Organizations with the Court

This Section lists provisions for the contentious or advisory jurisdiction of the Court in the following categories of instruments: constitutional texts of public international organizations; agreements concluded between the United Nations and other international organizations; authorizations accorded by the General Assembly of the United Nations to other organs of the United Nations or to international organizations by virtue of Article 96, paragraph 2, of the Charter[1]; multilateral conventions relating to the privileges and immunities of world-wide international organizations; agreements concluded by international organizations with States.

1. United Nations

Authorization to the *General Assembly* and the *Security Council* to request advisory opinions of the International Court of Justice: Charter, Article 96, paragraph 1.

Authorization to the *Economic and Social Council* to request advisory opinions of the International Court of Justice: resolution 89 (I) of the General Assembly, 11 December 1946.

Authorization to the *Trusteeship Council* to request advisory opinions of the International Court of Justice: resolution 171 (II) of the General Assembly, 14 November 1947, paragraph B.

Authorization to the *Interim Committee of the General Assembly* to request advisory opinions of the International Court of Justice: resolution 196 (III) of the General Assembly, 3 December 1948, paragraph 3. The mandate of the Interim Committee was extended indefinitely by resolution 295 (IV) of the General Assembly of 21 November 1949, paragraph 3, of which preserved its authority to request advisory opinions of the Court.

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[1] By resolution 957 (X) of 8 November 1955 the General Assembly, amending the Statute of the United Nations Administrative Tribunal (Art. 11), authorized the *Committee on Applications for Review of Judgements of the United Nations Administrative Tribunal* to request advisory opinions of the International Court of Justice. By resolution 50/54 of 11 December 1995, the General Assembly amended the Tribunal's Statute again, *inter alia* deleting Article 11 with respect to judgments rendered after 31 December 1995.

Convention on the privileges and immunities of the United Nations, adopted by the General Assembly on 13 February 1946, Article VIII, Section 30 (United Nations, *Treaty Series*, I, No. 4, Vol. 1).

Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, 26 June 1947, Article VIII, Section 21 (United Nations, *Treaty Series*, I, No. 147, Vol. 11).

Agreement between Chile and the United Nations Economic Commission for Latin America regulating conditions for the operation, in Chile, of the Headquarters of the Commission, 16 February 1953, Article XI, Section 21 (United Nations, *Treaty Series*, I, No. 4541, Vol. 314).

Agreement between the United Nations and Thailand relating to the Headquarters of the Economic Commission for Asia and the Far East in Thailand, 26 May 1954, Article XIII, Section 26 (United Nations, *Treaty Series*, I, No. 3703, Vol. 260).

Agreement between the United Nations and Ethiopia regarding the Headquarters of the United Nations Economic Commission for Africa, 18 June 1958, Article IX (United Nations, *Treaty Series*, I, No. 4597, Vol. 317).

Agreement between the United Nations and Japan regarding the Headquarters of the United Nations University, 14 May 1976, Section 22 (United Nations, *Treaty Series*, I, No. 14839, Vol. 1009).

Agreement between the United Nations and Greece regarding the Headquarters of the Co-ordinating Unit for the Mediterranean Action Plan, 11 February 1982, Section 26 (United Nations, *Treaty Series*, I, No. 20736, Vol. 1261).

2. *Specialized Agencies*

Convention on the privileges and immunities of specialized agencies approved by the General Assembly of the United Nations on 21 November 1947, Article VII, Section 24, and Article IX, Section 32 (United Nations, *Treaty Series*, I, No. 521, Vol. 33).

(a) *International Labour Organization*

Instrument for the amendment of the Constitution of the International Labour Organization, 9 October 1946, Articles 29, 31-34 and 37 (United Nations, *Treaty Series*, I, No. 229, Vol. 15).

Agreement between the United Nations and the International Labour Organization, approved by the General Assembly of the United Nations on 14 December 1946, Article IX (United Nations, *Treaty Series*, II, No. 9, Vol. 1).

Statute of the Administrative Tribunal of the International Labour Organization, adopted by the International Labour Conference on

9 October 1946 and modified by the Conference on 29 June 1949, Article XII[1].

(b) *Food and Agriculture Organization of the United Nations*

Constitution of the Food and Agriculture Organization of the United Nations, 16 October 1945, as amended in 1957, Article XVII (Food and Agriculture Organization of the United Nations, *Basic Texts*, Vol. I, 1968).

Agreement between the United Nations and the Food and Agriculture Organization of the United Nations, approved by the General Assembly of the United Nations on 14 December 1946, Article IX (United Nations, *Treaty Series*, II, No. 10, Vol. 1).

Terms of appointment of the Director General of the Food and Agriculture Organization of the United Nations: recommendation by the Conference of the Organization, 27 October 1945, paragraph 3 (Food and Agriculture Organization of the United Nations, *Report of the First Session of the Conference*, 16 October-1 November 1945).

(c) *United Nations Educational, Scientific and Cultural Organization*

Constitution of the United Nations Educational, Scientific and Cultural Organization, 16 November 1945, Articles V, paragraph 11 (adopted in 1952), and XIV, paragraph 2 (United Nations, *Treaty Series*, I, No. 52, Vol. 4)[2].

Agreement between the United Nations and the United Nations Educational, Scientific and Cultural Organization, approved by the General Assembly of the United Nations on 14 December 1946, as revised and approved by the General Assembly of the United Nations on 8 December 1962, Article X[3] (United Nations, *Treaty Series*, II, No. 11, Vol. 1; *ibid.*, General Assembly, resolution 1786 (XVII)).

Agreement between the United Nations Educational, Scientific and Cultural Organization and France regarding the Headquarters of UNESCO and the privileges and immunities of the Organization on French territory, 2 July 1954, Article 29 (United Nations, *Treaty Series*, I, No. 5103, Vol. 357).

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[1] The jurisdiction of this Tribunal, which is open to officials of the International Labour Organization or other persons claiming under the terms of appointment of an official, has been recognized also by the following international organizations, which are authorized to request advisory opinions: Food and Agriculture Organization of the United Nations; United Nations Educational, Scientific and Cultural Organization; World Health Organization; International Telecommunication Union; World Meteorological Organization; World Intellectual Property Organization; International Atomic Energy Agency.

[2] See also Rules of Procedure of the General Conference of UNESCO, Rule 33, and the Protocol of 10 December 1962 instituting a Conciliation and Good Offices Commission to be responsible for seeking the settlement of any disputes which may arise between States parties to the Convention against Discrimination in Education, Article 18 (UNESCO document 12C/Resolutions).

[3] Article XI before the revision of 1962.

(d) *World Health Organization*

Constitution of the World Health Organization, 22 July 1946, Articles 75-77 (United Nations, *Treaty Series*, I, No. 221, Vol. 14).

Agreement between the United Nations and the World Health Organization, approved by the General Assembly of the United Nations on 15 November 1947, Article X (United Nations, *Treaty Series*, II, No. 115, Vol. 19).

(e) *International Bank for Reconstruction and Development, International Finance Corporation and International Development Association*

Agreement between the United Nations and the International Bank for Reconstruction and Development, approved by the General Assembly of the United Nations on 15 November 1947, Article VIII (United Nations, *Treaty Series*, II, No. 109, Vol. 16).

Agreement on relationship between the United Nations and the International Finance Corporation, approved by the General Assembly of the United Nations on 20 February 1957, paragraph 1 (United Nations, *Treaty Series*, II, No. 546, Vol. 265).

Agreement on relationship between the United Nations and the International Development Association, approved by the General Assembly of the United Nations on 27 March 1961, Article I (United Nations, *Treaty Series*, II, No. 582, Vol. 394).

(f) *International Monetary Fund*

Agreement between the United Nations and the International Monetary Fund, approved by the General Assembly of the United Nations on 15 November 1947, Article VIII (United Nations, *Treaty Series*, II, No. 108, Vol. 16).

(g) *International Civil Aviation Organization*

Convention on International Civil Aviation, 7 December 1944, Articles 84-86 (United Nations, *Treaty Series*, I, No. 10612, Vol. 740; ICAO, *Convention on International Civil Aviation*, 1969).

Agreement between the United Nations and the International Civil Aviation Organization, approved by the General Assembly of the United Nations on 14 December 1946, Article X (United Nations, *Treaty Series*, II, No. 45, Vol. 8).

Agreement between the International Civil Aviation Organization and Canada regarding the Headquarters of the Organization, 14 April 1951, Article VII, Section 31 (United Nations, *Treaty Series*, I, No. 1335, Vol. 96).

(h) *International Telecommunication Union*

Agreement between the United Nations and the International Telecommunication Union, approved by the General Assembly of the United Nations on 15 November 1947, Article VII (United Nations, *Treaty Series*, II, No. 175, Vol. 30).

(i) *World Meteorological Organization*

Agreement between the United Nations and the World Meteorological Organization, approved by the General Assembly of the United Nations on 20 December 1951, Article VII (United Nations, *Treaty Series*, II, No. 415, Vol. 123).

(j) *International Maritime Organization*

Convention on the Inter-Governmental Maritime Consultative Organization, 6 March 1948, entered into force on 17 March 1958, Articles 55 and 56 (United Nations, *Treaty Series*, I, No. 4214, Vol. 289).

As from 22 May 1982 the Inter-Governmental Maritime Consultative Organization (IMCO) became the International Maritime Organization (IMO); the name of the organization was changed in the title of the 1948 Convention and the relevant Articles of the Convention were renumbered 69 and 70.

Agreement between the United Nations and the Inter-Governmental Maritime Consultative Organization, approved by the General Assembly of the United Nations on 18 November 1948, entered into force on 13 January 1959, Article IX (United Nations, *Treaty Series*, II, No. 553, Vol. 324).

(k) *World Intellectual Property Organization*

Agreement between the United Nations and the World Intellectual Property Organization, approved by the General Assembly of the United Nations on 17 December 1974, Article 12 (United Nations, *Treaty Series*, II, No. 729).

(l) *International Fund for Agricultural Development*

Agreement between the United Nations and the International Fund for Agricultural Development, approved by the General Assembly of the United Nations on 15 December 1977, Article XIII (United Nations, *Treaty Series*, II, No. 806, Vol. 1080).

(m) *United Nations Industrial Development Organization*

Constitution of the United Nations Industrial Development Organization, 8 April 1979, Article 22 (United Nations, *Treaty Series*, I, No. 23432, Vol. 1401).

Agreement between the United Nations Organization and the United Nations Industrial Development Organization, approved by the General Assembly of the United Nations on 17 December 1985, Article 12.

3. Related Organization

International Atomic Energy Agency

Statute of the International Atomic Energy Agency, 26 October 1956, Article XVII (United Nations, *Treaty Series*, I, No. 3988, Vol. 276).

Agreement concerning the relationship between the United Nations and the International Atomic Energy Agency, approved by the General Assembly of the United Nations on 14 November 1957, Article X (United Nations, *Treaty Series*, II, No. 548, Vol. 281).

Authorization to the International Atomic Energy Agency to request advisory opinions of the International Court of Justice: resolution 1146 (XII) of the General Assembly of the United Nations, 14 November 1957.

Agreement on the privileges and immunities of the International Atomic Energy Agency, approved by the Board of Governors of the Agency on 1 July 1959, Article X, Section 34 (United Nations, *Treaty Series*, I, No. 5334, Vol. 374).

Agreement between the International Atomic Energy Agency and Iraq, Lebanon, Libya, Tunisia, United Arab Republic, etc., for the establishment in Cairo of a Middle Eastern regional radio-isotope centre for the Arab countries, approved by the Board of Governors of the Agency on 14 September 1962, Article XVI (United Nations, *Treaty Series*, I, No. 7236, Vol. 494).

Nordic Mutual Emergency Assistance Agreement in connection with radiation accidents, signed on 17 October 1963 by the International Atomic Energy Agency, Denmark, Finland, Norway and Sweden, Article IX (United Nations, *Treaty Series*, I, No. 7585, Vol. 525).

CHAPTER IV

FUNCTIONING OF THE COURT AND ITS REGISTRY

In matters concerning its administration and procedure, the International Court of Justice applies Articles 21, 22 and 39-68 of its Statute as well as Articles 12, 19-31 and 38-109 of its Rules.

I. SEAT

The seat of the Court is in The Hague (Netherlands); this however, does not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable to do so, which to date, has not taken place (Statute, Art. 22, para. 1; Rules, Art. 55).

The Court occupies, in the Peace Palace, constructed between 1907 and 1913, at The Hague, the premises formerly occupied by the *Permanent Court of International Justice* (*PCIJ*) as well as a new wing built at the expense of the Netherlands Government and inaugurated in 1978. An extension of that new wing as well as a number of newly constructed offices on the third floor of the Peace Palace were inaugurated in 1978 and extended in 1997.

An agreement of 21 February 1946 between the United Nations and the Carnegie Foundation, which is responsible for the administration of the Peace Palace, determines the conditions under which the Court uses these premises. The agreement was approved by the General Assembly of the United Nations in resolution 84 (I) of 11 December 1946. It provides for the payment to the Carnegie Foundation of an annual contribution (see p. 139).

II. ADMINISTRATION

1. The Presidency and the Committees of the Court

In accordance with Article 12 of the Rules of Court, "the President shall preside at all meetings of the Court; he shall direct the work and supervise the administration of the Court". Occasionally he can be requested by third persons to undertake tasks outside the judicial work of the Court. These activities are described at the end of this Chapter (see p. 154).

Decisions which have to be taken by the Court on administrative matters are prepared by a Budgetary and Administrative Committee composed of the President (chair), the Vice-President and four to five judges who are elected tri-annually (at present composed of Judges Abraham, Bennouna, Yusuf and Xue).

In 1970 the Court established a Library Committee to review the programme of acquisitions for the library of the Court and supervise the continuous modernization of its services (at present composed of Judges Bennouna, Cançado Trindade and Gaja).

Finally, in 1979 the Court constituted the Rules Committee as a standing body. This committee advises the Court on procedural issues and working methods. Its Members are at present Judges Abraham, Keith, Skotnikov, Cançado Trindade, Donoghue and Gaja.

2. *The Registry*

Independent of the Secretariat of the United Nations, the Court is assisted by a Registry — its own international secretariat — whose activities are judicial, diplomatic and administrative in nature. The role of the Registry is defined by the Statute and the Rules (in particular Rules, Arts. 22-29). The organization of the Registry is prescribed by the Court on proposals submitted by the Registrar, and Instructions for the Registry are drawn up by the Registrar and approved by the Court (Rules, Art. 28, paras. 2 and 3, see Annex 12 on p. 290). An organizational structure chart of the Registry appears on page 129.

(1) *The Registrar and the Deputy-Registrar*

(a) *The Registrar*

The Court appoints its Registrar from among candidates proposed by Members of the Court. The Registrar is elected for a term of seven years and may be re-elected (Statute, Art. 21, para. 2; Rules, Art. 22). The Court also appoints a Deputy-Registrar, under the same conditions and in the same way as the Registrar (Rules, Art. 23).

The general functions of the Registrar are defined by the Rules of Court (Art. 26) and the Instructions for the Registry (Art. 1). He or she is the regular channel of communications to and from the Court, and in particular, effects all communications, notifications and transmissions of documents required by the Statute or by the Rules; keeps a General List of all cases, entered and numbered in the order in which the documents instituting proceedings or requesting an advisory opinion are received in the Registry; is present, in person or by his/her deputy, at meetings of the Court, and of the Chambers, and is responsible for the preparation of minutes of such meetings; makes arrangements for such provision or verification of translations and interpretations into the Court's official languages (English and French) as the Court may require; together with the President, countersigns all judgments, advisory opinions and orders of the Court as well as the minutes; is responsible for the administration of the Registry and for the work of all its departments and divisions, including the accounts and financial administration in accordance with the financial procedures of the United Nations; assists in maintaining the Court's external relations, both with international organizations and States and in the fields of information and publications (official publications of the Court, press releases, etc.); finally, he/she has custody of the seals and stamps of the Court, of the archives of the Court, and of such other archives as may be entrusted to the Court (including the archives of the Nuremberg Tribunal).

The present Registrar is Mr. Philippe Couvreur, of Belgian nationality, who was elected on 10 February 2000 for a term of seven years. On 8 February 2007, he was re-elected for a second term of seven years starting on 10 February 2007. Mr. Couvreur, who joined the Court in 1982 as Special Assistant to the Registrar and the Deputy-Registrar, had risen to the rank of Secretary, then First Secretary, in the Legal Department and had served as Principal Legal Secretary since 1995. He has lectured in public international law at various universities, including the Université Catholique de Louvain, and he is the author of a number of publications on the Court.

(b) *The Deputy-Registrar*

The Deputy-Registrar assists the Registrar and acts as Registrar in the latter's absence; he/she has recently been entrusted with wider administrative responsibilities, including direct supervision of the Archives, Computerization and General Assistance Divisions.

On 9 October 2007, the Court elected Ms Thérèse de Saint Phalle, of American and French nationality, to the post of Deputy-Registrar for a term of seven years as from 19 February 2008. Ms de Saint Phalle, a lawyer and professor of law, both in France and the United States of America, was previously Chief of Section in the Legal Services Branch of the United Nations Compensation Commission (1998-2005) and Senior Legal Adviser to the United Nations Operation in Côte d'Ivoire (2005-2008).

*

For the full list of previous Registrars and Deputy-Registrars of the Court, please see Annex 13, p. 291 or consult the ICJ website under the heading: "The Court/The Registry/The Registrar".

(c) *Privileges and Immunities*

In the Netherlands, in accordance with the terms of an exchange of letters, dated 26 June 1946, between the President of the Court and the Minister for Foreign Affairs of the Netherlands, the Registrar is, in a general way, accorded the same treatment as heads of diplomatic missions accredited to Her Majesty the Queen of the Netherlands, and officials of the Registry are treated as officials of comparable rank attached to diplomatic missions at The Hague (*I.C.J. Acts and Documents No. 6*, pp. 205-211).

By resolution 90 (I) of 11 December 1946 (*I.C.J. Acts and Documents No. 6*, pp. 211-215) the General Assembly of the United Nations recommended that, on journeys in connection with the exercise of his functions, the Registrar should enjoy all the privileges, immunities and facilities granted to diplomatic envoys and that the officials of the Registry should, in the same circumstances, enjoy such privileges, immunities and facilities for residence and travel as may be necessary for the independent exercise of their functions. This resolution also contains a recommendation calling upon Members of the United Nations to recognize and accept the United Nations laissez-passer issued by the Court to the Registrar and officials of the Registry. Such laissez-passer have been issued since 1950. They are similar in form to those issued by the Secretary-General of the United Nations. They are signed by the President of the Court and by the Registrar.

(d) *Relations with the Public*

Article 26, paragraph 1 *(a)*, of the Rules of Court states that the Registrar shall "be the regular channel for communications to and from the Court".

Consequently, correspondence of this nature should be addressed to:

The Registrar
International Court of Justice
Peace Palace
Carnegieplein 2
2517 KJ
The Hague, Netherlands

The Court's switchboard number is (+31) 70 302 23 23.
The Court's fax number is (+31) 70 364 99 28.

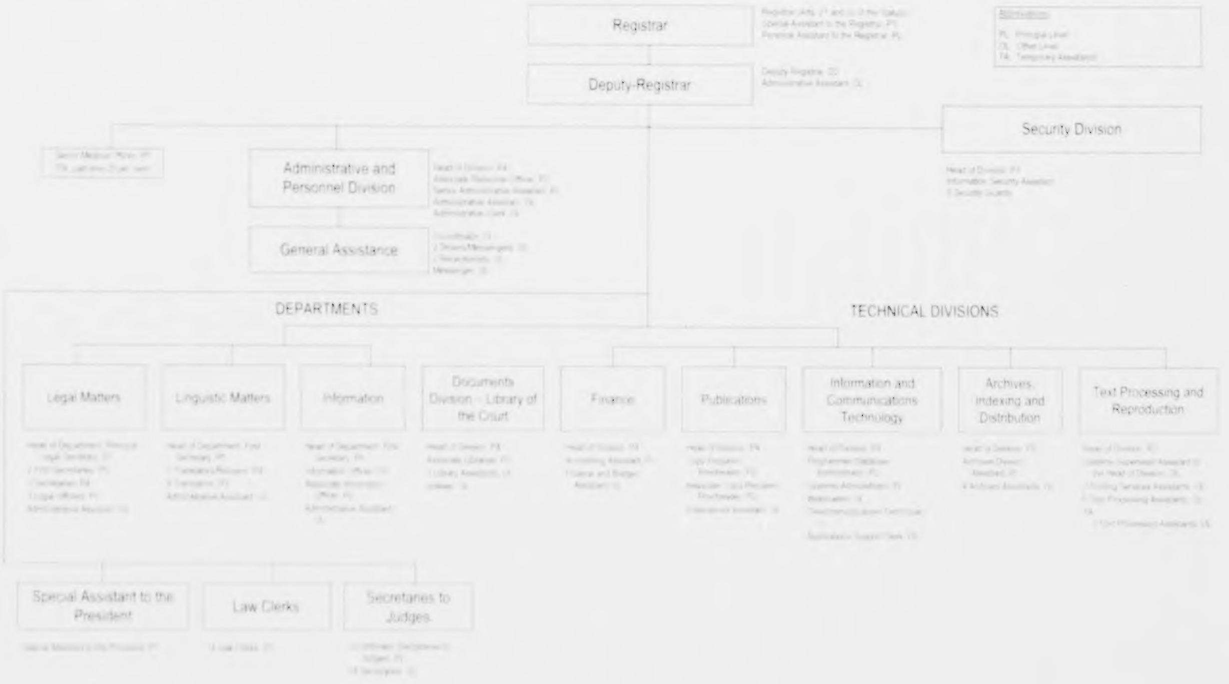
All general queries (regarding employment/internship opportunities, visits to the seat of the Court, etc.) may be sent to the Registry, in either English or French, via the Court's website (www.icj-cij.org) under "Contact". Please note that it is not possible for the Registry to give legal advice or to enter into correspondence with private persons concerning any matter at issue between them and the authorities of their own or another country.

3. Departments and Services of the Registry

The Registry is comprised of ten separate units: three departments and seven divisions (see organization chart on page 129). The officials of the Registry are appointed by the Court on proposals submitted by the Registrar (Statute, Art. 21, para. 2; Rules, Art. 25). General Service staff, however, are appointed by the Registrar with the approval of the President. Short-term staff are appointed by the Registrar. (Rules, Art. 25; Staff Regulations for the Registry, Art. 5; Instructions for the Registry, Art. 4). All officials of the Registry, whether permanent or temporary, must be proficient in English and French and those whose work involves linguistic responsibilities must have one of these languages as their first language.

International Court of Justice:

Organizational structure and post distribution as at 31 July 2012


Registrar
Deputy-Registrar
Abbreviations
PL Principal Level
OL Other Level
TA Temporary Assistance
Security Division
Administrative and Personnel Division
General Assistance
DEPARTMENTS
TECHNICAL DIVISIONS
Legal Matters
Linguistic Matters
Information
Documents Division – Library of the Court
Finance
Publications
Information and Communications Technology
Archives, Indexing and Distribution
Text Processing and Reproduction
Special Assistant to the President
Law Clerks
Secretaries to Judges

For additional information concerning the substantive divisions and departments of the Registry, please consult the *Annual Report* on the Court's website under: "The Court/Annual Reports". Hereinafter is presented information concerning more specifically these departments/divisions.

(a) *The Information Department*

Article 26, paragraph 1 *(k)* and *(m)*, of the Rules of Court provides that the Registrar shall "deal with enquiries concerning the Court and its work" and "ensure that information concerning the Court and its activities is made accessible to governments, the highest national courts of justice, professional and learned societies, legal faculties and law schools, and the media". For this purpose, the Registrar is assisted by the Information Department. The Registrar arranges as he considers necessary for the publication of information concerning the composition, jurisdiction and work of the Court, along with judgments, advisory opinions and orders relating to all cases and corresponding case documentation.

(i) Website of the Court

On 16 April 2007, to mark the end of its sixtieth anniversary year, the Court launched its new website. This website replaced the Court's original website launched in 1997. The website contains the entire jurisprudence of the Court, as well as that of its predecessor, the *Permanent Court of International Justice (PCIJ)*. Information concerning the functioning of the Court, its history, its elected Members, the judges *ad hoc* and the Registry are also featured.

The ICJ website offers detailed practical information for those wishing to attend proceedings of the Court, to see a presentation on the activities of the Court, or to visit the seat of the Court (it also includes a hearings schedule, online admission forms and a list of frequently asked questions (FAQ)).

The website features a "Press Room", which provides media representatives with all of the necessary information for covering the work of the Court and for accrediting themselves to Court proceedings. A multimedia gallery, from which digital photographs of recent public sessions of the Court, as well as video files (low resolution: flv, and high resolution mpeg2) and audio files (mp3) can be downloaded free of charge for non-commercial use, is also accessible.

Vacancy announcements and internship opportunities are also featured under "Registry", "Employment" or "Internships".

The website is available in the two official languages of the Court, English and French. A number of documents, including the ICJ video entitled "The Role and Activities of the ICJ", are also available in the other four official languages of the United Nations: Arabic, Chinese, Russian and Spanish. Among these documents are the United Nations Charter, the Statute and Rules of the Court, the Court's *Annual Reports* to the General Assembly since 1989-1990 and the summaries of decisions of the Court (from 1948 to 2002).

(ii) Information materials published by the Registry

The Registry publishes a number of informative documents on the workings and activities of the Court. These include:

- a short description of the role and functioning of the Court called *The Court at a Glance* (available in English, French and Spanish);
- a booklet entitled *The International Court of Justice: Questions and Answers about the Principal Judicial Organ of the United Nations* (2000) (also known as the *Green Book*), published by the United Nations Department of Public Information in co-operation with the Court, available in French and English, as well as in Arabic, Chinese, Russian, Spanish and Dutch;
- a handbook entitled *The International Court of Justice* (2004) (also known as the *Blue Book*), available in French and English, along with a previous edition (1986) which was published in Arabic, Chinese, Russian, Spanish and German.

These documents are obtainable within the framework of the United Nations Programme of Assistance in Teaching, Study, Dissemination and Wider Appreciation of International Law, from the Registry of the Court or from United Nations Information Centres.

These documents are also available in English and French on the website of the Court under "Press Room/FAQ".

In 2006, on the occasion of the sixtieth anniversary of the Court, the Registry published a richly illustrated, bilingual coffee table book called *La Cour Internationale de Justice – The International Court of Justice*.

Over the course of 2012, in keeping with its wish to commemorate the 90th anniversary of the inauguration of the PCIJ, the Registry of the ICJ will republish an explanatory book on the history and work of the first permanent international tribunal which was originally published in 1939 by the Registry of the PCIJ and which remained out of print for many years. The electronic version of the new trilingual edition (English, Spanish, French) will be available online, free of charge. The clothbound version will be on sale in 2013. Purchasing information can be found on the Court's website at www.icj-cij.org.

For information regarding the sale of the Court's publications please write to:

United Nations Publications, 300 East 42nd Street, Room IN-919 J,
New York, NY, 10017, United States of America.
Tel. (+1-212) 963 8302; Fax (+1-212) 963 34 89.
E-mail: publications@un.org

(iii) *Presentation of the work and functioning of the Court and receiving groups*

Groups often visit the Registry to receive presentations on the work of the Court. So far as the work of the Court permits, the Registrar accedes to requests of this kind. During the period under review the Court received a large number of groups, including diplomats, scholars and academics, judges and representatives of judicial authorities, lawyers and legal professionals, as well as journalists.

All requests for presentations on the history, workings and activities of the Court must be submitted via the Court's website at: www.icj-cij.org, under "Practical Information" at least six weeks in advance. Presentations are available in both English and French and are free of charge.

(b) *The Publications Division*

The publications of the International Court of Justice are published by the Registry (Rules of Court, Art. 26, para. 1 *(i)*, and Art. 71, para. 6; Instructions for the Registry, Arts. 23, 43, 67-69 and 72). Information about the publications of the present Court and those of its forerunner, the *Permanent Court of International Justice* is given below.

(i) *Series Published by the International Court of Justice*

The publications of the Court are at present classified in series as shown hereunder.

Reports of Judgments, Advisory Opinions and Orders

This series contains the Reports of the decisions of the Court in both English and French. Each decision is published as soon as given, in an unbound fascicle which is sold separately.

An analytical index is published for each year's decisions. The collected decisions, with index, for each year may also be obtained ready bound together in one to three volumes.

Sixty-seven bound volumes have so far been published, the first being the *I.C.J. Reports* for the years 1947 and 1948, which are collected in a single volume. The latest is the volume for 2009.

Official citation of the series: *I.C.J. Reports*, with an indication of the year. For a separate fascicle, the short title of the case, the countries (if a contentious case) and the nature of the decision should be given, e.g.: *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 14; or *Certain Questions concerning Diplomatic Relations (Honduras v. Brazil), Order of 12 May 2010, I.C.J. Reports 2010 (I)*, p. 303. For an exhaustive list of all case title citations for the *I.C.J. Reports*, please refer to the ICJ website under the heading: "Publications/Judgments, Advisory Opinions and Orders".

Pleadings, Oral Arguments, Documents

Volumes in this series are published after the termination of each case and contain the documentation relating to the case in the original language, that is, in English or in French.

This comprises the document instituting proceedings, the written pleadings and their annexes, the verbatim record of the oral proceedings, and any documents submitted to the Court after the closure of the written proceedings.

Depending upon the length of the documents to be printed, one or more volumes are issued for each case.

Abbreviated reference: *I.C.J. Pleadings*, with the short title of the case and the countries involved in parenthesis, e.g.: *I.C.J. Pleadings, LaGrand (Germany* v. *United States of America)*, Vol. I. For an exhaustive list of all title citations for the *I.C.J. Pleadings*, please refer to the ICJ website under "Publications/Pleadings, Oral Arguments, Documents".

Acts and Documents concerning the Organization of the Court

Six volumes have appeared in this bilingual (English/French) series.

No. 1 is now out of print. *No. 2* contained the text of the Rules of Court as amended in 1972. *No. 3* contained the texts of the Charter of the United Nations, the Statute and Rules of Court and the Resolution concerning the Internal Judicial Practice of the Court, together with certain documents relating to the Court's privileges and immunities. It was published in 1977. *No. 4* contained the same documents as *No. 3* but with the text of the 1978 revised Rules of Court replacing that of the 1972 amended Rules; it further included certain resolutions concerning States entitled to appear before the Court. It was published in July 1978.

No. 5 contained the same documents as *No. 4*, with some corrections and an additional resolution concerning a State entitled to appear before the Court. It was published in July 1990.

No. 6 contains the same documents as *No. 5*, but with the text of the Rules as amended by the Court in 2001 and 2005, as well as the Practice Directions adopted in 2001 and amended in 2006. It was published in March 2007.

Abbreviated reference: *I.C.J. Acts and Documents*, with an indication of the number of the volume. The entire text of *I.C.J. Acts and Documents, No. 6* can be found on the website of the Court under: "Publications/Acts and Documents No. 6".

Yearbook

Each year a *Yearbook* is published in which an account is given of the work of the Court during the period from 1 August of the preceding year to 31 July of the current year. There is also a French edition of this publication, the *Annuaire*.

The present *Yearbook* is the sixty-sixth in the series, which started with *I.C.J. Yearbook 1946-1947*.

Abbreviated reference: *I.C.J. Yearbook*, with an indication of the year covered by the volume, e.g.: *I.C.J. Yearbook 2009-2010*. A PDF version of the most recent *I.C.J. Yearbook* can be found on the website of the Court under: "Publications/I.C.J. Yearbook 2010-2011".

Bibliography of the International Court of Justice

Each year, the Registry issues a *Bibliography* listing such works and documents relating to the Court as have come to its attention during the previous year.

Bibliographies Nos. 1-18 formed Chapter IX in the appropriate *Yearbook* or *Annuaire* up to the 1963-1964 editions. Beginning with No. 19, later *Bibliographies* were issued as separate fascicles. The latest *I.C.J. Bibliography* published is No. 57 (year 2003).

Abbreviated reference: *I.C.J. Bibliography*, with the serial number of the volume, followed, if desired, by the entry number of the work cited. E.g.: *I.C.J. Bibliography No. 35*: 81: 150, as from 1981.

(ii) *Dissemination of the Publications of the International Court of Justice*

The publications of the Court are distributed free on request and as required to the governments or public services of all States entitled to appear before the Court. The *I.C.J. Reports*, the *I.C.J. Pleadings* and *Acts and Documents concerning the Organization of the Court* series are also published in electronic PDF format on the Court's website under the heading: "Publications".

Printed publications are sold by the Sales and Marketing Sections of the United Nations Secretariat at:

United Nations Publications,
300 East 42nd Street, Room IN-919 J,
New York, NY 10017, United States of America.
Tel.: +1-212-963-8302; Fax: +1-212-963-3489
E-mail: publications@un.org

These publications may also be consulted in major law libraries, including many university libraries, certain depository libraries for United Nations publications, and libraries aided by the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law. They may also be obtained from any bookseller selling United Nations publications. *Orders and requests for information should be sent to these addresses and not to the Registry.*

A *Catalogue* is issued in English and French. It lists the sales number of each publication and its price in US dollars. It is updated each year by means either of an addendum or of a new edition. A free copy of the *Catalogue* may be obtained by applying to the Sales Sections of the United Nations. A PDF version is also available on the Court's website at: http://www.icj-cij.org/publications/en/catalogue.pdf

(iii) *Publications of the Permanent Court of International Justice*

Between 1922 and 1946 the *Permanent Court of International Justice* published the following series:

Series A (Nos. 1-24): *Collection of Judgments* (up to and including 1930)

Series B (Nos. 1-18): *Collection of Advisory Opinions* (up to and including 1930)

Series A/B (Nos. 40-80): *Judgments, Orders and Advisory Opinions* (beginning in 1931)

Series C (Nos. 1-19): *Acts and Documents relating to Judgments and Advisory Opinions given by the Court* (up to and including 1930)

Series C (Nos. 52-88): *Pleadings, Oral Statements and Documents* (beginning in 1931)

Series D (Nos. 1-6): *Acts and Documents concerning the Organization of the Court*

Series E (Nos. 1-16): *Annual Reports*

Series F (Nos. 1-4): *General Indexes*

They may be consulted in certain university and other libraries with a substantial legal section.

In the latter part of 2012, to celebrate the 90th anniversary of the creation of the *Permanent Court of International Justice*, the Court will publish a deluxe special edition of the original 1939 booklet supplemented with additional photographs, information, a foreword and afterword. This new edition will be entitled *The Permanent Court of International Justice (PCIJ), 1922-2012*, and is a trilingual (French, English, Spanish) edition.

(c) *Library and Archives of the Court*

(i) *Library*

The principal role of the Court's library is to assist Members of the Court and the different departments and divisions of the Registry, notably the Department of Legal Matters and the Linguistics Department, with their research. The library also compiles annual bibliographies of the Court, which inventory those books and periodical articles that make reference to the *International Court of Justice* or the *Permanent Court of International Justice*.

The library of the *International Court of Justice*, which succeeded the library of the *Permanent Court of International Justice* created in 1931, is distinct from the Peace Palace Library. The two libraries, however, maintain a privileged relationship based on rules established in 1931 and confirmed by a *modus vivendi* dating from 1946.

The library's collection also includes the Archives of the International Military Tribunal at Nuremberg (see point (*ii*) below).

Information regarding the library of the Court is available on the website of the Court, under "The Registry". The Court's library is not open to members of the public.

(ii) *Archives of the Court, the PCIJ and the International Military Tribunal at Nuremberg*

The archives of the International Military Tribunal at Nuremberg were entrusted to the International Court of Justice by a decision of the Tribunal on 1 October 1946. These archives were transported to the Peace Palace, where representatives of the Tribunal and the staff of the Court took delivery of them on 14 March 1950. They have remained in the library's collection ever since.

All questions regarding consultation of these archives should be addressed in writing to the Registrar of the Court at the address mentioned on page 118 above. Neither the archives of the International Court of Justice nor the *Permanent Court of International Justice* are open to the public (Rules, Art. 26, para. 1 (*n*)).

4. *Finances of the Court*

(a) *Financial regulations*

With regard to financial matters, the International Court of Justice applies Articles 32, 33, 35 and 64 of the Statute of the Court, Article 26, paragraph 1 (*j*), of the Rules of the Court, Articles 6, 24-36 and 55-63 of the Instructions for the Registry, the Staff Regulations for the Registry, the Financial Rules and Regulations of the United Nations and the relevant resolutions of the General Assembly of the United Nations.

(b) *Method of covering expenditure*

In accordance with Article 33 of the Statute of the Court, "The expenses of the Court shall be borne by the United Nations in such a manner as shall be decided by the General Assembly." As the budget of the Court has been incorporated in the budget of the United Nations, Member States participate in the expenses of both in the same proportion, in accordance with the scale of assessments determined by the General Assembly.

Under an established rule, sums derived from staff assessment, sales of publications (dealt with by the Sales Sections of the Secretariat), bank interest, and other revenues, are recorded as United Nations income.

(c) *Drafting of the budget*

In accordance with Articles 24 to 28 of the Instructions for the Registry a preliminary draft budget is prepared by the Registrar. This preliminary draft is submitted for the consideration of the Budgetary and Administrative Committee of the Court and then for approval to the Court itself.

Once approved, the draft budget is forwarded to the Secretariat of the United Nations for incorporation in the draft budget of the United

Nations (Volume I). It is then examined by the Advisory Committee on Administrative and Budgetary Questions (ACABQ) and is afterwards submitted to the Fifth Committee of the General Assembly. It is finally adopted by the General Assembly in plenary meeting, within the framework of decisions concerning the budget of the United Nations.

(d) *Budget implementation*

The Registrar is responsible for implementing the budget, with the assistance of the Head of the Finance Division. The Registrar ensures that proper use is made of the funds voted and sees that no expenses are incurred that are not provided for in the budget (Instructions for the Registry, Art. 29). He alone is entitled to incur liabilities in the name of the Court, subject to any possible delegations of authority (Instructions for the Registry, Art. 33). In accordance with a decision of the Court, the Registrar regularly communicates a statement of accounts to the Budgetary and Administrative Committee of the Court.

The accounts of the Court are regularly audited by the Board of Auditors appointed by the General Assembly and, periodically, by the internal auditors of the United Nations. At the beginning of each month, the closed accounts of the preceding month are forwarded to the Secretariat of the United Nations (Instructions for the Registry, Art. 25).

(e) *Budget of the Court for the biennium 2010-2011*

The Court ended the 2010-2011 biennium with a negative balance in its accounts, which was due to substantial reductions of the budget at the end of 2010 and again at the end of 2011, in total by 9.4 per cent, due to re-costing and without prior consultation with the Court. These large reductions posed difficulties to the Court in meeting some of its contractual obligations and operational expenses, resulting in an overall negative balance at the end of the biennium.

(f) *Budget of the Court for the biennium 2012-2013*

The Court was pleased to note that its requests for new posts and its other spending proposals were largely granted.

With the approval of the new posts and the conversion from temporary to established posts, the staffing strength of the Court has increased to a total of 117 posts, consisting of 59 established posts in the professional and higher categories, as well as 56 established and two temporary posts in the General Services category.

For the approved budget for the biennium 2012-2013, see Annex 14, p. 292.

(g) *Salaries and other emoluments of Members of the Court*

By virtue of Article 32, paragraph 5, of the Statute, the salaries, allowances and compensation paid to the judges are fixed by the General

Assembly. In this connection, the General Assembly adopted a series of resolutions and decisions, the latest one being resolution 65/258 of 16 March 2011. A full list of these resolutions and decisions can be found on pages 366-367 of the *I.C.J. Yearbook 2009-2010*.

The emoluments of Members of the Court are made up of an annual salary, which may not be decreased during the period of office (Statute of the Court, Art. 32, paras. 1 and 5). By its resolution 61/262 of 4 April 2007, the General Assembly decided that the annual salaries of the Members of the Court would comprise an annual base salary with a corresponding post adjustment per index point equal to one per cent of the net base salary to which would be applied a post adjustment multiplier for the Netherlands. With effect from 1 January 2012, the annual base salary of Members of the Court is fixed at $169,098.

Under Article 32, paragraphs 2 and 3, of the Statute, the President of the Court and the Vice-President (for every day on which he/she acts as President) receive special allowances in addition. The rates, fixed by resolution 40/257 of 18 December 1985, were revised by resolution 65/258 of 16 March 2011 and amount to $25,000 per annum for the President of the Court and $156 for the Vice-President for every day on which he/she acts as President up to a maximum amount of $15,600 per annum.

Under Article 32, paragraph 4, of the Statute, judges *ad hoc* chosen to sit in certain cases under Article 31 of the Statute shall receive compensation for each day in which they exercise their functions. Compensation to judges *ad hoc* has changed over time. With effect from 1 April 2008, the daily fee of *ad hoc* judges has been fixed at 1/365th of the annual salary of a Member of the Court plus post adjustment.

Article 32, paragraph 7, of the Statute provides: "Regulations made by the General Assembly shall fix the conditions under which retirement pensions may be given to Members of the Court." The General Assembly first adopted the Pensions Scheme Regulations for Members of the International Court of Justice in its resolution 86 (I) of 11 December 1946 and modifications were made over the years. The detailed conditions of the current pension scheme for Members of the Court are provided on pages 368-370 of the *I.C.J. Yearbook 2009-2010*.

By its resolution 65/258, the General Assembly decided that the pension scheme of Members of the Court will next be reviewed at its sixty-sixth session, including options for defined benefit and defined contribution pensions schemes, and in this regard, requested the Secretary-General to ensure that, in that review, the expertise available within the United Nations is taken full advantage of. The General Assembly further decided, by its resolution 66/638, to defer the review of the pension scheme of Members of the Court to its sixty-eighth session.

By its resolutions 40/257 of 18 December 1985, 61/262 of 4 April 2007 and 63/251 of 24 December 2008, the General Assembly determined the conditions of education grant applicable to Members of the Court, which remain unchanged to the present day.

By virtue of Article 32, paragraph 7, of the Statute, regulations made by the General Assembly fix the conditions under which Members of the Court have their travelling expenses refunded. The General Assembly adopted the first Travel and Subsistence Regulations of the International Court of Justice by its resolution 85 (I) of 11 December 1946, which were subsequently amended by resolution 37/240 of 21 December 1982 and are still in force. The provisions of these regulations are set out in the *I.C.J. Yearbook 1982-1983*, pp. 164-167.

(b) *Salaries, allowances and expenses of the Registrar and officials of the Registry*

Salaries, pensions and other emoluments of the Registrar and other officials of the Registry, are set out in the *I.C.J. Yearbook 2009-2010*, pp. 371-372.

The latest revision of the salary scale for staff in the professional and higher categories was approved by the General Assembly by resolution 66/235, effective 1 January 2012. The latest revision of the pensionable remuneration scale for this category of staff was promulgated by the International Civil Service Commission (ICSC), effective 1 August 2011. The ICSC promulgated the revised salary scale for The Hague for staff members in the General Services category, effective 1 December 2011. For eligible temporary staff, the daily subsistence allowance for The Hague is fixed at 272 euros.

(c) *Common services*

The common services of the Court and of the Registry, as well as capital expenditures, come under special items in the budget. In particular, the Court pays to the Carnegie Foundation an annual contribution for the premises it occupies at the Peace Palace and in the new wing. The amount of the contribution has undergone successive alterations since it was first fixed by General Assembly resolution 84 (I) of 11 December 1946, and stands at 1,236,334 euros per annum as from 1 January 2011 and at 1,264,152 euros per annum as from 1 January 2012.

III. PRACTICE OF THE COURT WITH REGARD TO PROCEDURE

1. *General*

(a) *Official languages*

The official languages of the Court are English and French (Statute, Art. 39; Rules, Arts. 51, 70 and 71).

(b) *Official communications*

In all cases submitted to the Court, communications and documents for the Court are delivered to the Registrar and he is the regular channel for communications or notifications from the Court (Rules, Art. 26, para. 1, and Art. 30; Instructions for the Registry, Arts. 3, 11 and 13).

Communications in a case which are intended for a State party thereto are sent to its agent at the Hague address it designates for the purpose (Rules, Art. 40, para. 1).

For communications with other States, the Registrar requests the foreign ministers of States entitled to appear before the Court to indicate the channel through which their Governments would wish to receive such communications. The channel of communication indicated is usually the Embassy in The Hague or the Ministry of Foreign Affairs of the State in question.

For public international organizations, the Registrar addresses the communications of the Court to the Director General or Secretary-General of the organization, as the case may be.

(c) *Minutes*

The Registrar is present at all sittings and meetings of the Court and is responsible for drawing up the minutes. After being signed by the President and the Registrar, these minutes are filed in the archives (Statute, Art. 47; Rules, Art. 21, Art. 26, para. 1 *(f)-(i)*, and Art. 71; Instructions for the Registry, Art. 19).

(d) *General List*

The Registrar prepares and keeps up to date a General List of cases submitted to the Court (Rules, Art. 26, para. 1 *(b)*, and Art. 38, para. 5; Instructions for the Registry, Art. 6, para. 1, and Art. 46, para. 3).

(For the General List of the *Permanent Court of International Justice*, see *P.C.I.J., Series E, No. 16*, pp. 92-147.)

2. *Procedure in Contentious Cases*

(a) *Institution of proceedings and appointment of agents*

As soon as proceedings are instituted, the special agreement or the application, filed in one of the two official languages of the Court, is translated and printed in a bilingual edition by the Registry, then communicated to all concerned and to the States entitled to appear before the Court (Statute, Art. 40; Rules, Art. 38, paras. 4 and 5; Art. 39, para. 1, and Art. 42).

The Registrar instructs the Information Department to publish a press release informing the general public and the media that proceedings have been instituted. Copies of the special agreement or application and the press release are published on the website of the Court.

The party which files a document instituting proceedings informs the Court at the same time of the name of the agent who will be its representative in the proceedings and take steps on its behalf; the other party then appoints its agent as soon as possible (Statute, Art. 42; Rules, Art. 40; Practice Direction VIII). A party may also appoint a co-agent, a deputy-agent or an additional agent. Agents, and counsel and advocates also, enjoy such privileges and immunities as may be required for the independent exercise of their duties (Statute, Art. 42, para. 3; *I.C.J. Acts and Documents No. 6*, pp. 211-215).

The President, who is required to ascertain the views of the parties on questions of procedure, summons the agents to meet him as soon as possible after their appointment and whenever necessary thereafter (Rules, Art. 31).

(b) *Written proceedings*

The written proceedings comprise the filing of pleadings within time-limits fixed in orders made by the Court or, if it is not sitting, the President; the pleadings are in principle confined to a Memorial and a Counter-Memorial, though the Court may if it thinks fit authorize or direct that there be a Reply and a Rejoinder (Statute, Art. 43; Rules, Arts. 44-46 and 48; Instructions for the Registry, Art. 14; Practice Direction I).

The party's submissions are set out in each pleading (Rules, Art. 49; Practice Direction II).

The agent of the party filing the pleading supplies the Registry (Statute, Art. 43, paras. 3 and 4; Rules, Arts. 50-52; Practice Directions III[1] and IV) with the following:

an original copy of the pleading, signed by the agent, to which is annexed a certified copy of any relevant document adduced in support of the contentions put forward;

an English or French translation, certified by the agent to be accurate, of any part of a pleading or annexed document submitted in another language;

a copy, certified by the agent, of the pleading and annexed documents, for communication to the other party;

125 further copies of the pleading and annexed documents (75 of which should be on paper, while 50 may be on CD-ROM);

an electronic copy of any pleading;

in the case of any document of which only parts are relevant and only necessary extracts have been annexed to the pleading, a copy of the whole document.

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[1] The text of Practice Direction III was modified in January 2009, see page 150 of this *Yearbook*.

The format for the pleadings and annexes is 19 × 26 cm. If they are submitted in printed form, which is not compulsory, it is recommended that the Court's Typographical Rules (supplied by the Registry on request) be complied with.

The Registry usually translates, for the judges, pleadings and annexed documents, filed in one of the official languages of the Court, into the other official language (Rules, Art. 26, para. 1 *(g)*).

The Registrar arranges for the publication of press releases giving information concerning the course of the written proceedings. Moreover, the Court may, after ascertaining the views of the parties, communicate the pleadings on request to any State entitled to appear before the Court. It may also, after ascertaining the parties' views, make the pleadings available to the general public and the media on or after the opening of the oral proceedings (Rules, Art. 53); this is generally done by posting them on the Court's website and by depositing copies in a number of libraries, including the Peace Palace Library. The pagination of the pleadings and annexed documents which may thus be made accessible is provisional in character. They are not given their final pagination until they are published in the *I.C.J. Pleadings* series (see *(e)* below).

(c) *Oral proceedings*

Upon the closure of the written proceedings, a case is ready for hearing. The opening date of the oral proceedings is fixed by the Court or, if it is not sitting, the President (Rules, Art. 54). Public sittings are held at the seat of the Court, on weekdays. They are devoted to hearing the arguments of counsel and such evidence of witnesses or experts[1] as the parties may call; the Court itself may also arrange for a witness to be heard, entrust any individual, body or organization with the task of giving an expert opinion or decide on an inspection *in loco*[2] (Statute, Arts. 43-46 and 48-51; Rules, Arts. 57-68; Instructions for the Registry, Art. 20; Practice Direction VI).

The Court settles the order in which the parties are heard, the number of counsel who will address the Court, and the method of handling the evidence (Rules, Art. 58, para. 2). It is customary for the parties to present their arguments in the order in which their pleadings have been deposited or, in the case of proceedings instituted by special agreement, in the order laid down by the Court after consultations with the agents of the parties. Speeches and statements are normally made in one of the Court's two official languages and are (simultaneously) interpreted into the other; arrangements may be made for some other language to be used (Statute, Art. 39; Rules, Art. 70; Instructions for the Registry, Art. 17).

When the Court or a judge puts a question to the agents, counsel and advocates, the answer may be given either immediately or within a time-limit fixed by the President; if given in writing it is communicated to the other party (Rules, Art. 61, paras. 2-4, and Art. 72), but is not made public.

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[1] The Court heard witnesses and/or expert witnesses in ten cases. For a list of these cases see Annex 15, p. 294.

[2] The Court conducted an inspection *in loco* at the site of the hydroelectric dam project in the case concerning *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, but did not accede to requests concerning an inspection *in loco* in either the case concerning *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)* or the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*.

A provisional verbatim record of each public sitting is drawn up by the Registry in the official language used, and translated into the other. Copies in the original official language are then communicated to the parties and to the witnesses and experts in order that mistakes may be corrected under the supervision of the Court (Statute, Art. 47; Rules, Art. 71). A period of 24 hours is usually allowed for the submission of corrections by the parties, a non-corrected version is published online within a few hours of the conclusion of the hearings.

In the course of the hearings each party reads out its final submissions and hands the Registrar copies of the text (Rules, Art. 60, para. 2). The filing of new documents after closure of the written proceedings is permissible only with the other party's consent or the authorization of the Court (Practice Direction IX); such documents must be filed in the same number of copies as the pleadings (see Section *(b)* on page 132 above); the Registrar transmits them to the other party with a request for observations. No reference may be made to the contents of any document which has not been duly produced, unless the document is part of a publication readily available (Statute, Art. 52; Rules, Art. 56)[1].

The Registrar issues press releases giving all necessary information as to the dates of the hearings (Instructions for the Registry, Art. 12). Members of the diplomatic corps, representatives of the media and any person who comes to the Peace Palace on the occasion of a hearing are welcome to attend, subject to accreditation or admission procedures. Photographs may be taken by the press for a few minutes at the opening of hearings, under strict conditions (see the ICJ website under the heading "Press Room"). Filming by the press is permitted under the same rules.

(d) *Deliberations*

After the close of the oral proceedings, the Court withdraws to deliberate in private and to prepare a judgment. The deliberations of the Court are conducted *in camera* and remain confidential. This applies to all aspects of the deliberations, including the schedule of meetings (Statute, Arts. 54-55; Rules, Arts. 19-21; Instructions for the Registry, Art. 16).

The manner in which the Court conducts its deliberations is governed by a resolution concerning the internal judicial practice of the Court, the most recent version of which was adopted on 12 April 1976 (see *I.C.J. Acts and Documents No. 6*, pp. 175-183).

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[1] In January 2009, the Court, as part of the ongoing review of its procedures and working methods, adopted new Practice Direction XIII. Practice Direction XIII gives guidance to the parties as to how their views with regard to questions of procedure can be ascertained under Article 31 of the Rules. The text of Practice Direction XIII can be found on page 153 of this *Yearbook*. The full text of the Practice Directions can be found on the website of the Court, under "Basic Documents". The Practice Directions are also published in the volume *I.C.J. Acts and Documents No. 6*, pp. 163-171.

(e) *Judgment*

The judgment is read out at a public sitting for which similar arrangements are made as for a hearing in open court, in particular with regard to the admission of the public and the assistance provided to representatives of the press (see *(c)* above).

The judgment is prepared in both official languages, of which one is indicated as authoritative (Statute, Art. 39; Rules, Art. 96). If it does not represent in whole or in part the unanimous opinion of the judges, any judge is entitled to attach a dissenting or separate opinion, or a declaration which records his position without stating his reasons; the judgment indicates the names of the judges constituting the majority (Statute, Arts. 56-58; Rules, Arts. 94 and 95).

Three original copies of the judgment are signed by the President and the Registrar and are then sealed; one is placed in the archives of the Court and the others are handed to the parties (Rules, Art. 95, para. 3; Instructions for the Registry, Art. 21).

Immediately after the public reading, copies of the judgment are placed at the disposal of the judges and the representatives of the parties. At the same time an unofficial summary of the decision and the press release are issued, on the authority of the Registrar, to all those attending. They are also published on the Court's website and sent by email to all those registered to the press release mailing list.

As soon as possible after the judgment is issued, the printed text of the judgment becomes available as a separate fascicle in the *I.C.J. Reports* series, which is sent to States entitled to appear before the Court and is placed on sale. Subsequently, the documentation of the case is published in one or more printed volumes of the series entitled *I.C.J. Pleadings, Oral Arguments, Documents*. It is these printed texts (see the Court's website under the heading: "Publications/Pleadings, Oral Arguments, Documents") which should be used for all purposes of quotation or citation.

(f) *Expenses and costs*

The expenses of the Court, including amounts payable to witnesses or experts appearing at the instance of the Court (Rules, Art. 68; Instructions for the Registry, Art. 18), are borne out of the United Nations budget; if a party to a case does not contribute to the United Nations budget, the Court itself fixes the amount payable by that party as a contribution towards the expenses of the Court for the case.

Each party bears its own costs, unless the Court makes an order in favour of a party for the payment of the costs (Statute, Art. 64; Rules, Art. 95, para. 1, and Art. 97). In addition, there exists a Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice, established on 1 November 1989 (see United Nations doc. A/ 44/PV.43 (1989)). The Fund is designed to encourage States to settle their disputes peaceably by submitting them to the Court. The Fund is open to States in all circumstances where the jurisdiction of the Court (or the admissibility of the application) is not or is no longer the subject of dispute on their part. A further purpose of the Fund is to help States parties to a dispute to comply with the judgment rendered by the Court.

3. Occasional Rules in Contentious Cases

(a) Provisional measures

The Court has the power to indicate provisional measures (Statute, Art. 41). A request for such measures is treated as a matter of urgency, and the Court's decision is given in an order (Rules, Arts. 73-78). Such provisional measures have been requested in 41 cases. For the list of these cases see Annex 16 below, p. 295. The latest requests were filed on 18 November 2010, by the Republic of Costa Rica, in the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and on 28 April 2011 by Cambodia in the case concerning *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand)*.

(b) Joinder of proceedings

The Court may direct that the proceedings in two or more cases be joined (Rules, Art. 47). It does this by means of an order. Proceedings were joined in the cases concerning *South West Africa (Ethiopia* v. *South Africa; Liberia* v. *South Africa)* and *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*.

(c) Preliminary objections

Preliminary objections (see Chap. III, p. 116 above) must be filed as soon as possible, and not later than three months after the delivery of the Memorial (Rules, Art. 79). Notwithstanding that provision, the Court, following the submission of the application in a case and after the President has met and consulted with the parties, may decide that any questions of jurisdiction and admissibility shall be determined separately. Where the Court so decides, the parties shall submit any pleadings as to jurisdiction and admissibility within the time-limits fixed by the Court and in the order determined by it. Preliminary objections suspend the proceedings on the merits and may be answered by the observations and submissions of the opposing party, to be filed within a time-limit fixed by an order. In accordance with Practice Direction V, this time-limit should generally not exceed four months from the date of the filing of the preliminary objections. Oral proceedings on the objections ensue; the party which raised them being called upon to speak first. The Court gives its decision on the objections in a judgment; if it dismisses them, the proceedings on the merits are resumed from the point of interruption; they are likewise resumed if it declares that the objections do not possess an exclusively preliminary character. The Court gave its decision on the preliminary objections raised in 34 cases, see Annex 17 below, p. 297. The latest being on 18 February 2011, in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation)*. In seven other cases the Court was not called upon to give a decision on such objections, either because they were withdrawn or as a result of a discontinuance. For the list of all these cases see also Annex 17 below, p. 297.

The Court gave effect to an agreement between the parties that objections should be heard and determined within the framework of the merits in the cases concerning *Elettronica Sicula S.p.A. (ELSA) (United States of America* v. *Italy)* and *East Timor (Portugal* v. *Australia)*. Preliminary objections were joined to the merits under the pre-1972 Rules of Court by agreement between the parties in the following case: *Certain Norwegian Loans (France* v. *Norway)* and by a decision of the Court in the following two cases: *Right of Passage over Indian Territory (Portugal* v. *India)* and *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium* v. *Spain)*.

The Court dealt with questions of jurisdiction and/or admissibility in a number of cases. For a list of these cases, see below Annex 18, p. 299.

(d) *Counter-claims*

Counter-claims may be presented if they are directly connected with the subject-matter of the claim of the other party and come within the jurisdiction of the Court. They are to be made by a party in its Counter-Memorial, as part of the submissions. In case of doubt, it is for the Court to decide whether a counter-claim is admissible and shall form part of the proceedings (Rules, Art. 80). Counter-claims were made by the respondent States and admitted by the Court in four cases. For a list of these cases see Annex 19 below, p. 300.

(e) *Intervention, presentation of information*

A third State may request to be permitted to intervene if it considers that it has an interest of a legal nature which may be affected by the decision in the case; it is for the Court to decide upon such a request (Statute, Art. 62; Rules, Arts. 81 and 83-85). Applications for permission to intervene under Article 62 and declarations under Article 63 were submitted in 12 cases, the latest in the case concerning *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening)* in which the Court, by an Order of 4 July 2011, granted Greece permission to intervene in the proceedings as a non-party. For a list of these cases see Annex 20 below, p. 301.

If the dispute relates to the construction of a convention to which States other than those concerned in the case are parties, these States are notified forthwith and have the right to intervene in the proceedings (Statute, Art. 63; Rules, Arts. 43, 82-84 and 86).

Similarly, public international organizations may, at the request of the Court or a party or on their own initiative, furnish the Court with information relevant to cases before it; whenever the construction of their constituent instruments or of a convention adopted thereunder is in question, they are notified (Statute, Art. 34, paras. 2 and 3; Rules, Art. 69).

(f) *Default, settlement, discontinuance*

If one of the parties does not appear before the Court or fails to defend its case, the other party may call upon the Court to decide in favour of its claim (Statute, Art. 53). Twelve judgments and orders were delivered in the absence of one of the parties. For the list of these cases see Annex 21 below, p. 302.

The Court, or the President if the Court is not sitting, may, by way of an order, officially record the conclusion of a settlement or a discontinuance (Rules, Arts. 88 and 89). Twenty-three cases ended in discontinuance. Two of these ended in discontinuance as regarded the question of reparation which the Judgment had left to be settled. For the list of these cases see Annex 22 below, p. 303. The latest case to end in discontinuance is that concerning *Certain Criminal Proceedings in France (Republic of the Congo* v. *France)*, which was removed from the Court's General List, by an Order dated 16 November 2010, at the request of the Republic of the Congo.

(g) *Execution, interpretation or revision of judgments*

The judgments of the Court are binding, final and without appeal (Charter, Art. 94, para. 1; Statute, Arts. 59-60; Rules, Art. 94, para. 2). The parties may, however, make a request for interpretation or, in certain circumstances, for revision of a judgment (see above, Chap. III, pp. 116-117).

The decision of the Court on such requests is given in the form of a judgment (Statute, Arts. 60-61; Rules, Arts. 98-100). The Court gave five decisions on requests for interpretation. See Annex 9 below, p. 287. The Court gave decisions on applications for revision in three cases. See Annex 10 below, p. 288. A Chamber of the Court gave one decision on an application for revision. So far, the ICJ has never accepted to revise any of its decisions.

Article 94, paragraph 2, of the Charter of the United Nations states that, if any party to a case fails to perform the obligations incumbent upon it under a judgment, the other party may have recourse to the Security Council.

(h) *Special reference to the Court*

When a matter which has been the subject of proceedings before some other international body is brought before the Court, the provisions of the Statute and of the Rules apply (Rules, Art. 87). The Court was on one occasion in 1971, seised in the case *Appeal Relating to the Jurisdiction of the ICAO Council (India* v. *Pakistan)*.

4. *Procedure in Advisory Proceedings*

In addition to the Rules of Court which are expressly applicable to proceedings in regard to advisory opinions, the Court is guided by the provisions which apply in contentious proceedings (Statute, Art. 68; Rules, Art. 102). It may thus be led to apply the articles of the Statute concerning judges *ad hoc* (see Chap. I, p. 9, above).

The practical information given concerning the course of the procedure in contentious cases (see Section 2, pp. 140-145 above) applies *mutatis mutandis* to the procedure in regard to advisory opinions, in particular as regards arrangements for the public and the press.

(a) *Request*

Notice of a request for an advisory opinion (see Chap. III, pp. 117-118, above) is addressed to the Court by the Secretary-General of the United Nations or the chief administrative officer of the organization authorized to make the request; all documents likely to throw light upon the question are to be transmitted at the same time as the request or as soon as possible thereafter (Statute, Art. 65, para. 2; Rules, Art. 104).

Notice of the request for an advisory opinion is given to all States entitled to appear before the Court (Statute, Art. 66, para. 1).

In addition, the Court gives the States and international organizations considered likely to be able to furnish information on the question an opportunity to submit their views in writing or orally, or both (Statute, Art. 66, paras. 2-4).

(b) *Written and oral proceedings*

A request for an opinion usually gives rise to written proceedings followed by oral proceedings (Statute, Art. 66; Rules, Arts. 105 and 106). In the case of urgency, the Court takes all necessary steps to accelerate the procedure (Rules, Art. 103). The Court decided to accelerate the procedure in accordance with Article 103 of the Rules in one case only, the case concerning the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*.

(c) *Deliberations*

The deliberations are conducted in the same manner as in contentious cases (Rules, Arts. 19-21 and 107; resolution concerning the Internal Judicial Practice of the Court, Art. 10).

(d) *Advisory opinion*

The advisory opinion is read in open Court; if it does not represent in whole or in part the unanimous opinion of the judges, any judge is entitled to attach a dissenting or separate opinion, or a declaration which records his position without stating his reasons; the advisory opinion dicates the names of the judges constituting the majority (Statute, Art. 67; Rules, Arts. 107 and 108).

One of the original copies of the advisory opinion is transmitted to the dy which made the request (Rules, Art. 109), after which copies are tributed to those attending. The text of the advisory opinion, a mmary and a press release are then posted on the website of the Court.

The opinions given by the Court are purely advisory in character. In rtain cases, the instrument by which the Court is seised provides that e advisory opinion has binding force.

5. *Practice Directions*

The text of the Practice Directions is reproduced below:

"PRACTICE DIRECTIONS

Practice Direction I

The Court wishes to discourage the practice of simultaneous deposit of pleadings in cases brought by special agreement.

The Court would expect future special agreements to contain provisions as to the number and order of pleadings, in accordance with Article 46, paragraph 1, of the Rules of Court. Such provisions shall be without prejudice to any issue in the case, including the issue of burden of proof.

If the special agreement contains no provisions on the number and order of pleadings, the Court will expect the parties to reach agreement to that effect, in accordance with Article 46, paragraph 2, of the Rules of Court.

Practice Direction II

Each of the parties is, in drawing up its written pleadings, to bear in mind the fact that these pleadings are intended not only to reply to the submissions and arguments of the other party, but also, and above all, to present clearly the submissions and arguments of the party which is filing the proceedings.

In the light of this, at the conclusion of the written pleadings of each party, there is to appear a short summary of its reasoning.

Practice Directions are the result of the Court's ongoing review of its working methods. amendments to the Practice Directions, following their adoption by the Court, are ed on the Court's website and published in the Court's *Yearbook*, with a note of any poral reservations relating to their applicability.

Practice Direction III

The parties are strongly urged to keep the written pleadings as concise as possible, in a manner compatible with the full presentation of their positions.

In view of an excessive tendency towards the proliferation and protraction of annexes to written pleadings, the parties are also urged to append to their pleadings only strictly selected documents.

Practice Direction IV

Where one of the parties has a full or partial translation of its own pleadings or of those of the other party in the other official language of the Court, these translations should as a matter of course be passed to the Registry of the Court. The same applies to the annexes.

These translations will be examined by the Registry and communicated to the other party. The latter will also be informed of the manner in which they were prepared.

Practice Direction V

With the aim of accelerating proceedings on preliminary objections made by one party under Article 79, paragraph 1, of the Rules of Court, the time-limit for the presentation by the other party of a written statement of its observations and submissions under Article 79, paragraph 5, shall generally not exceed four months from the date of the filing of the preliminary objections.

Practice Direction VI

The Court requires full compliance with Article 60, paragraph 1, of the Rules of Court and observation of the requisite degree of brevity in oral pleadings. In that context, the Court will find it very helpful if the parties focus in the first round of the oral proceedings on those points which have been raised by one party at the stage of written proceedings but which have not so far been adequately addressed by the other, as well as on those which each party wishes to emphasize by way of winding up its arguments. Where objections of lack of jurisdiction or of inadmissibility are being considered, oral proceedings are to be limited to statements on the objections.

Practice Direction VII

The Court considers that it is not in the interest of the sound administration of justice that a person sit as judge *ad hoc* in one case who is also acting or has recently acted as agent, counsel or advocate in another case before the Court. Accordingly, parties, when choosing a judge *ad hoc* pursuant to Article 31 of the Statute and Article 35 of the Rules of Court, should refrain from nominating persons who are acting as agent, counsel or advocate in another case before the Court or have acted in that capacity in the three years preceding the date of the nomination. Furthermore, parties should likewise refrain from designating as agent, counsel or advocate in a case before the Court a person who sits as judge *ad hoc* in another case before the Court.

Practice Direction VIII

The Court considers that it is not in the interest of the sound administration of justice that a person who until recently was a Member of the Court, judge *ad hoc*, Registrar, Deputy-Registrar or higher official of the Court (principal legal secretary, first secretary or secretary), appear as agent, counsel or advocate in a case before the Court. Accordingly, parties should refrain from designating as agent, counsel or advocate in a case before the Court a person who in the three years preceding the date of the designation was a Member of the Court, judge *ad hoc*, Registrar, Deputy-Registrar or higher official of the Court.

Practice Direction IX

1. The parties to proceedings before the Court should refrain from submitting new documents after the closure of the written proceedings.

2. A party nevertheless desiring to submit a new document after the closure of the written proceedings including during the oral proceedings, pursuant to Article 56, paragraphs 1 and 2, of the Rules, shall explain why it considers it necessary to include the document in the case file and shall indicate the reasons preventing the production of the document at an earlier stage.

3. In the absence of consent of the other party, the Court will authorize the production of the new document only in exceptional circumstances, if it considers it necessary and if the production of the document at this stage of the proceedings appears justified to the Court.

4. If a new document has been added to the case file under Article 56 of the Rules of Court, the other party, when commenting upon it, shall confine the introduction of any further documents to what is strictly necessary and relevant to its comments on what is contained in this new document.

Practice Direction IXbis

1. Any recourse to Article 56, paragraph 4, of the Rules of Court, is not to be made in such a manner as to undermine the general rule that all documents in support of a party's contentions shall be annexed to its written pleadings or produced in accordance with Article 56, paragraphs 1 and 2, of the Rules of Court.

Practice Directions VII and VIII do not affect a choice or designation made by the ties prior to 7 February 2002, the date of the adoption by the Court of those Directions.

2. While the Court will determine, in the context of a particular case, whether a document referred to under Article 56, paragraph 4, of the Rules of Court, can be considered 'part of a publication readily available', it wishes to make it clear to the parties that both of the following two criteria must be met whenever that provision is applied:

(i) First, the document should form 'part of a publication', i.e. should be available in the public domain. The publication may be in any format (printed or electronic), form (physical or online, such as posted on the Internet) or on any data medium (on paper, on digital or any other media).

(ii) Second, the requirement of a publication being 'readily available' shall be assessed by reference to its accessibility to the Court as well as to the other party. Thus the publication or its relevant parts should be accessible in either of the official languages of the Court, and it should be possible to consult the publication within a reasonably short period of time. This means that a party wishing to make reference during the oral proceedings to a new document emanating from a publication which is not accessible in one of the official languages of the Court should produce a translation of that document into one of these languages certified as accurate.

3. In order to demonstrate that a document is part of a publication readily available in conformity with paragraph 2 above and to ensure the proper administration of the judicial process, a party when referring to the contents of a document under Article 56, paragraph 4, of the Rules of Court, should give the necessary reference for the rapid consultation of the document, unless the source of the publication is well known (e.g. United Nations documents, collections of international treaties, major monographs on international law, established reference works, etc.).

4. If during the oral proceedings a party objects to the reference by the other party to a document under Article 56, paragraph 4, of the Rules of Court, the matter shall be settled by the Court.

5. If during the oral proceedings a party refers to a document which is part of a publication readily available, the other party shall have an opportunity of commenting upon it.

Practice Direction IXter

The Court has noted the practice by the parties of preparing folders of documents for the convenience of the judges during the oral proceedings. The Court invites parties to exercise restraint in this regard and recalls that the documents included in a judge's folder should be produced in accordance with Article 43 of the Statute or Article 56, paragraphs 1 and 2, of the Rules of Court. No other documents may be included in the folder except for any document which is part of a publication readily available in conformity with Practice Direction IX*bis* and under the conditions specified therein. In addition, parties should indicate from which annex to the written pleadings or which document produced under Article 56, paragraphs 1 and 2, of the Rules, the documents included in a judge's folder originate.

Practice Direction X

Whenever a decision on a procedural issue needs to be made in a case and the President deems it necessary to call a meeting of the agents to ascertain the views of the parties in this regard pursuant to Article 31 of the Rules of Court, agents are expected to attend that meeting as early as possible.

Practice Direction XI

In the oral pleadings on requests for the indication of provisional measures parties should limit themselves to what is relevant to the criteria for the indication of provisional measures as stipulated in the Statute, Rules and jurisprudence of the Court. They should not enter into the merits of the case beyond what is strictly necessary for that purpose.

Practice Direction XII

1. Where an international non-governmental organization submits a written statement and/or document in an advisory opinion case on its own initiative, such statement and/or document is not to be considered as part of the case file.

2. Such statements and/or documents shall be treated as publications readily available and may accordingly be referred to by States and intergovernmental organizations presenting written and oral statements in the case in the same manner as publications in the public domain.

3. Written statements and/or documents submitted by international non-governmental organizations will be placed in a designated location in the Peace Palace. All States as well as intergovernmental organizations presenting written or oral statements under Article 66 of the Statute will be informed as to the location where statements and/or documents submitted by international non-governmental organizations may be consulted.

Practice Direction XIII

The reference in Article 31 of the Rules of Court to ascertaining the views of the parties with regard to questions of procedure is to be understood as follows:

After the initial meeting with the President, and in the context of any further ascertainment of the parties' views relating to questions of procedure, the parties may, should they agree on the procedure to be followed, inform the President by letter accordingly. The views of the parties as to the future procedure may also, should they agree, be ascertained by means of a video or telephone conference."

IV. OCCASIONAL FUNCTIONS ENTRUSTED TO THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE

1. International Instruments Providing for Appointment of Arbitrators, etc

There are many international instruments which provide that in certain eventualities the President of the Court may be requested by the contracting parties to appoint arbitrators, umpires, members of conciliation commissions, etc.

States proposing to insert such a provision in a treaty should consult the President as to his willingness to accept such a task, and submit the draft provision to him. This frequently provides that, if the President is of the nationality of one of the parties to the dispute, the appointment should be made either by the Vice-President or by the senior Member of the Court not so disqualified.

Such a provision is found, for instance, in bilateral agreements relating to air transport, social security, reparations or guarantees, loans, technical co-operation and the protection of investments; in multilateral treaties; in conventions or agreements concerning the constitution, status or privileges and immunities of international organizations; and in agreements or contracts concluded between States and international organs.

2. Other Requests for Appointment of Arbitrators

The President of the Court is sometimes requested to appoint arbitrators under the terms of contracts concluded between a State and a corporation or between corporations. The President should not be called upon to perform this function in regard to transnational arbitration agreements dealing with matters in which public international law does not find its place.

The President should be consulted in advance and a draft contract should be submitted to him. It is usually provided that if the President is of the same nationality as one of the parties to the contract, the appointment should be made either by the Vice-President or by the senior Member of the Court not so disqualified.

3. Other Appointments

The President has also at times been requested by States or international organizations to appoint persons to fill other offices.

Such appointments are, for instance, provided for in texts such as Article 12 of the Protocol of 23 June 1953 for limiting and regulating the cultivation of the poppy plant, the production of, international and wholesale trade in, and use of opium, or Article 4 of the Regulations for ne execution of the Convention of 14 May 1954 for the protection of ultural property in the event of armed conflict or, again, Rule 109.1 (*a*) the Staff Rules of the United Nations and Regulation 9.1.1 of the Staff egulations of the United Nations Educational, Scientific and Cultural rganization.

CHAPTER V

WORK OF THE COURT IN 2011-2012

I. PROCEEDINGS BEFORE THE COURT

A. CONTENTIOUS CASES

1. Gabčíkovo-Nagymaros Project (Hungary/Slovakia)

On 2 July 1993, Hungary and Slovakia jointly notified to the Court a Special Agreement, signed between them on 7 April 1993, for the submission of certain issues arising out of differences regarding the implementation and the termination of the Budapest Treaty of 16 September 1977 on the construction and operation of the Gabčíkovo-Nagymaros barrage system.

In Article 2 of the Special Agreement:

> "(1) The Court is requested to decide on the basis of the Treaty and rules and principles of general international law, as well as such other treaties as the Court may find applicable,
>
> *(a)* whether the Republic of Hungary was entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros Project and on the part of the Gabčíkovo Project for which the Treaty attributed responsibility to the Republic of Hungary;
> *(b)* whether the Czech and Slovak Federal Republic was entitled to proceed, in November 1991, to the 'provisional solution' and to put into operation from October 1992 this system, described in the Report of the Working Group of Independent Experts of the Commission of the European Communities, the Republic of Hungary and the Czech and Slovak Federal Republic dated 23 November 1992 (damming up of the Danube at river kilometre 1851.7 on Czechoslovak territory and resulting consequences on water and navigation course);
> *(c)* what are the legal effects of the notification, on 19 May 1992, of the termination of the Treaty by the Republic of Hungary.
>
> (2) The Court is also requested to determine the legal consequences, including the rights and obligations for the Parties, arising from its Judgment on the questions in paragraph (1) of this Article."

Each of the Parties filed a Memorial, a Counter-Memorial and a Reply within the time-limits fixed by the Court or its President.

Public hearings in the case were held between 3 March and 15 April

1997. From 1 to 4 April 1997, the Court paid a site visit (the first ever in its history) to the Gabčikovo-Nagymaros Project, by virtue of Article 66 of the Rules of Court.

In its Judgment of 25 September 1997 (*I.C.J. Reports 1997*, p. 7) the Court found that both Hungary and Slovakia had breached their legal obligations. It called on both States to negotiate in good faith in order to ensure the achievement of the objectives of the 1977 Budapest Treaty, which it declared was still in force, while taking account of the factual situation that had developed since 1989.

On 3 September 1998 Slovakia filed in the Registry of the Court a request for an additional judgment in the case. Such an additional judgment was necessary, according to Slovakia, because of the unwillingness of Hungary to implement the judgment delivered by the Court in that case on 25 September 1997.

Hungary filed a written statement of its position on the request for an additional judgment made by Slovakia within the time-limit of 7 December 1998 fixed by the President of the Court.

The Parties have subsequently resumed negotiations and have informed the Court on a regular basis of the progress made. The President of the Court holds meetings with their agents when he deems it necessary. The case remains pending.

2. *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*

On 28 December 1998, Guinea filed an Application instituting proceedings against the Democratic Republic of the Congo (DRC) in respect of a dispute concerning "serious violations of international law" alleged to have been committed upon the person of Mr. Ahmadou Sadio Diallo, a Guinean national. In its Application, Guinea maintained that

> "Mr. Ahmadou Sadio Diallo, a businessman of Guinean nationality, was unjustly imprisoned by the authorities of the Democratic Republic of the Congo, after being resident in that State for thirty-two (32) years, despoiled of his sizable investments, businesses, movable and immovable property and bank accounts, and then expelled."

Guinea added:

> "[t]his expulsion came at a time when Mr. Ahmadou Sadio Diallo was pursuing recovery of substantial debts owed to his businesses [Africom-Zaire and Africontainers-Zaire] by the [Congolese] State and by oil companies established in its territory and of which the State is a shareholder."

To found the jurisdiction of the Court, Guinea invoked in the Application the declarations whereby the two States have recognized the compulsory jurisdiction of the Court under Article 36, paragraph 2, of the Statute of the Court.

On 3 October 2002, the DRC raised preliminary objections in respect of the admissibility of Guinea's Application. In its Judgment of 24 May 2007 on these preliminary objections, the Court declared the Application of the Republic of Guinea to be admissible "in so far as it concerns protection of Mr. Diallo's rights as an individual" and "in so far as it concerns protection of [his] direct rights as *associé* in Africom-Zaire and Africontainers-Zaire". However, the Court declared the Application of the Republic of Guinea to be inadmissible "in so far as it concerns protection of Mr. Diallo in respect of alleged violations of rights of Africom-Zaire and Africontainers-Zaire".

In its Judgment of 30 November 2010 on the merits, the Court found that, in respect of the circumstances in which Mr. Diallo had been expelled on 31 January 1996, the DRC had violated Article 13 of the International Covenant on Civil and Political Rights and Article 12, paragraph 4, of the African Charter on Human and Peoples' Rights. The Court also found that, in respect of the circumstances in which Mr. Diallo had been arrested and detained in 1995-1996 with a view to his expulsion, the DRC had violated Article 9, paragraphs 1 and 2, of the Covenant and Article 6 of the African Charter. The Court further decided that "the Democratic Republic of the Congo [was] under obligation to make appropriate reparation, in the form of compensation, to the Republic of Guinea for the injurious consequences of the violations of international obligations referred to in subparagraphs (2) and (3) [of the operative part]", namely the unlawful arrests, detentions and expulsion of Mr. Diallo. In addition, the Court found that the DRC had violated Mr. Diallo's rights under Article 36, paragraph 1 *(b)*, of the Vienna Convention on Consular Relations. It did not however order the DRC to pay compensation for this violation. In the same Judgment, the Court rejected all other submissions by Guinea relating to the arrests and detentions of Mr. Diallo, including the contention that he had been subjected to treatment prohibited by Article 10, paragraph 1, of the Covenant during his detentions. Furthermore, the Court found that the DRC had not violated Mr. Diallo's direct rights as an *associé* in the companies Africom-Zaire and Africontainers-Zaire.

Finally, the Court decided, with respect to the question of compensation owed by the DRC to Guinea, that "failing agreement between the Parties on this matter within six months from the date of [the said] Judgment, [this] question . . . shall be settled by the Court" and reserved for this purpose the subsequent procedure in the case.

In its Order of 20 September 2011, the Court noted that the time-limit fixed by it in the operative part of its Judgment had expired on 30 May 2011. It further recalled that it had decided in that Judgment that, having been sufficiently informed of the facts of the present case, a single exchange of written pleadings by the Parties would be sufficient in order for it to decide on the amount of compensation due to the Republic of Guinea. In the same Order, the Court fixed 6 December 2011 and

21 February 2012 as the respective time-limits for the filing of a Memorial by the Republic of Guinea and a Counter-Memorial by the Democratic Republic of the Congo on the above-mentioned question. Those pleadings were filed within the time-limits thus fixed.

In the Memorial relating to compensation, the Parties presented the following final submissions to the Court:

> "In compensation for the damage suffered by Mr. Ahmadou Sadio Diallo as a result of his arbitrary detentions and expulsion, the Republic of Guinea begs the Court to order the Democratic Republic of the Congo to pay it (on behalf of its national) the following sums:
>
> US$250,000 for mental and moral damage, including injury to his reputation;
> US$6,430,148 for loss of earnings during his detention and following his expulsion;
> US$550,000 for other material damage; and
> US$4,360,000 for loss of potential earnings;
>
> amounting to a total of eleven million five hundred and ninety thousand one hundred and forty-eight American dollars (US$11,590,148), not including statutory default interest.
>
> Furthermore, as a result of having been forced to institute the present proceedings, the Guinean State has incurred unrecoverable costs which it should not, in equity, be required to bear and which are assessed at US$500,000. The Republic of Guinea also begs the Court to order the DRC to pay it that sum.
>
> The Democratic Republic of the Congo should also be ordered to pay all the costs."

On behalf of the Government of the Democratic Republic of the Congo,
in the Counter-Memorial:

> "Having regard to all of the arguments of fact and law set out . . ., the Democratic Republic of the Congo asks the Court to adjudge and declare that:
>
> (1) compensation in an amount of US$30,000 is due to Guinea to make good the non-pecuniary injury suffered by Mr. Diallo as a result of his wrongful detentions and expulsion in 1995-1996;
> (2) no default interest is due on the amount of compensation as fixed above;
> (3) the DRC shall have a time-limit of six months from the date of the Court's judgment in which to pay to Guinea the above amount of compensation;
> (4) no compensation is due in respect of the other material damage claimed by Guinea;
> (5) each Party shall bear its own costs of the proceedings, including costs and fees of its counsel, advocates, advisers, assistants and others."

On 19 June 2012, the Court delivered its Judgment on the question of the compensation owed by the Democratic Republic of the Congo to the Republic of Guinea (*I.C.J. Reports 2012 (I)*, p. 324), a summary of which is given below.

Reasoning of the Court

I. Procedural and factual background of the case (paras. 1-17)

The Court begins by recalling the procedural background of the present case (see above).

II. Heads of damage in respect of which compensation is requested (paras. 18-55)

(A) Compensation for the non-material injury suffered by Mr. Diallo (paras. 18-25)

The Court is of the view that non-material injury can be established even without specific evidence. In the case of Mr. Diallo, the fact that he suffered non-material injury is an inevitable consequence of the wrongful acts of the DRC already ascertained by the Court. In its Judgment on the merits, the Court found that Mr. Diallo had been arrested without being informed of the reasons for his arrest and without being given the possibility to seek a remedy; that he was detained for an unjustifiably long period pending expulsion; that he was made the object of accusations that were not substantiated; and that he was wrongfully expelled from the country where he had resided for 32 years and where he had engaged in significant business activities. The Court therefore considers it reasonable to conclude that the DRC's wrongful conduct caused Mr. Diallo significant psychological suffering and loss of reputation.

Furthermore, the Court has taken into account the number of days for which Mr. Diallo was detained — he was continuously detained for 66 days, from 5 November 1995 until 10 January 1996, and was detained for a second time between 25 and 31 January 1996, that is, for a total of 72 days — and the conclusion in its Judgment on the merits that it had not been demonstrated that Mr. Diallo was mistreated in violation of Article 10, paragraph 1, of the Covenant.

The Court also notes that the circumstances of the case point to the existence of certain factors which aggravate Mr. Diallo's non-material injury, in particular the context in which the wrongful detentions and expulsion occurred. In addition to the fact that Mr. Diallo's arrests and detentions aimed at allowing the expulsion measure were arbitrary within the meaning of Article 9, paragraph 1, of the Covenant and Article 6 of the African Charter, the Court emphasizes that it also noted in its Judgment on the merits that it was difficult not to discern a link between Mr. Diallo's expulsion and the fact that he had attempted to recover debts which he believed were owed to his companies by the Zairean State or companies in which the State held a substantial portion of the capital. The Court observes that quantification of compensation for non-material injury necessarily rests on equitable considerations.

In the light of the circumstances set out above, the Court considers that the amount of US$85,000 would provide appropriate compensation for the non-material injury suffered by Mr. Diallo.

(B) *Compensation for material injury suffered by Mr. Diallo* (para. 26)

The Court explains that it will begin by addressing Guinea's claim relating to the loss of Mr. Diallo's personal property; it will then consider Guinea's claims concerning loss of professional remuneration during Mr. Diallo's unlawful detentions and following his unlawful expulsion from the DRC; and, finally, it will turn to Guinea's claim in respect of "potential earnings".

1. *Alleged loss of Mr. Diallo's personal property (including assets in bank accounts)* (paras. 27-36)

The Court notes that, according to Guinea, Mr. Diallo's abrupt expulsion prevented him from making arrangements for the transfer or disposal of personal property that was in his apartment and also caused the loss of certain assets in bank accounts. The Court states that it will address Guinea's claim for the loss of Mr. Diallo's personal property, without taking into account property of the two companies, given the Court's prior decision that Guinea's claims relating to the companies were inadmissible. The Court notes that the personal property at issue in Guinea's claim may be divided into three categories: furnishings of Mr. Diallo's apartment that appear on the inventory of personal property in the apartment, certain high-value items alleged to have been in Mr. Diallo's apartment, which are not specified on that inventory; and assets in bank accounts.

As to personal property that was located in Mr. Diallo's apartment, the Court notes that the inventory of the property in Mr. Diallo's apartment, which both Parties have submitted to the Court, was prepared approximately 12 days after Mr. Diallo's expulsion from the DRC. The Court considers that, although both Parties appear to accept that the items that are listed on the inventory were in the apartment at the time the inventory was prepared, there is, however, uncertainty about what happened to that property. Guinea has failed to prove the extent of the loss suffered by Mr. Diallo and the extent to which any such loss was caused by the DRC's unlawful conduct. The Court adds that even assuming that it could be established that the personal property on the inventory was lost and that any such loss was caused by the DRC's unlawful conduct, Guinea offered no evidence regarding the value of the items on the inventory. Despite the shortcomings in the evidence related to the property listed on the inventory, the Court recalls that Mr. Diallo lived and worked in the territory of the DRC for over 30 years, during which time he surely accumulated personal property. Even assuming that the DRC is correct in its contention that Guinean officials and Mr. Diallo's relatives were in a position to dispose of that personal property after Mr. Diallo's expulsion, the Court considers that, at a minimum, Mr. Diallo would have had to transport his personal property to Guinea or to arrange for its disposition in the DRC. Thus, the Court is satisfied that the DRC's unlawful conduct caused some material injury to Mr. Diallo with respect to personal property that had been in the apartment in which he lived, although it would not be reasonable to accept the very large sum claimed by Guinea for this head of damage. In such a situation, the Court considers it appropriate to award compensation based on equitable considerations in the amount of US$10,000.

The Court next considers Guinea's contention that Mr. Diallo's apartment contained certain high-value items not specified on the inventory described above. It notes that Guinea mentions several items in its Memorial, but offers few details and provides no evidence to support the assertion that Mr. Diallo owned those items at the time of his expulsion, that they were in his apartment if he did own them, or that they were lost as a result of his treatment by the DRC. For these reasons, the Court rejects Guinea's claims as to the loss of high-value items not specified on the inventory.

As to assets alleged to have been contained in bank accounts, the Court considers that Guinea offers no details and no evidence to support its claim. There is no information about the total sum held in bank accounts, the amount of any particular account or the name(s) of the bank(s) in which the account(s) were held. Further, there is no evidence demonstrating that the unlawful detentions and expulsion of Mr. Diallo caused the loss of any assets held in bank accounts. For example, Guinea does not explain why Mr. Diallo could not access any such accounts after leaving the DRC. Thus, it has not been established that Mr. Diallo lost any assets held in his bank accounts in the DRC or that the DRC's unlawful acts caused Mr. Diallo to lose any such financial assets. Accordingly, the Court rejects Guinea's claim as to the loss of bank account assets.

The Court therefore awards no compensation in respect of the high-value items and bank account assets.

2. *Alleged loss of remuneration during Mr. Diallo's unlawful detentions and following his unlawful expulsion* (paras. 37-50)

At the outset, the Court notes that, in its submissions at the conclusion of its Memorial, Guinea claims US$6,430,148 for Mr. Diallo's loss of earnings during his detentions and following his expulsion. However, Guinea makes reference elsewhere in its Memorial to a sum of US$80,000 for Mr. Diallo's loss of earnings during his detentions. As presented by Guinea, this claim for US$80,000 although not reflected as a separate submission, is clearly distinct from its claim for US$6,430,148 which, in the reasoning of the Memorial, only concerns the alleged "loss of earnings" following Mr. Diallo's expulsion. The Court will interpret Guinea's submissions in light of the reasoning of its Memorial, as it is entitled to do. Therefore, it will first consider the claim of US$80,000 for loss of professional remuneration during Mr. Diallo's detentions and then will examine the claim of US$6,430,148 for loss of professional remuneration following his expulsion.

As to the alleged loss of professional remuneration during the unlawful detentions of Mr. Diallo, the Court recalls that Guinea maintains that, prior to his arrest on 5 November 1995, Mr. Diallo received monthly remuneration of US$25,000 in his capacity as *gérant* of Africom-Zaire and Africontainers-Zaire. Based on that figure, Guinea estimates that Mr. Diallo suffered a loss totalling US$80,000 during the 72 days of his detention, an amount that, according to Guinea, takes account of inflation. The Court notes that the DRC contends that Guinea has not produced any documentary evidence to support the claim for loss of remuneration. The DRC also takes the view that Guinea has failed to show that Mr. Diallo's detentions caused a loss of remuneration that he otherwise would have received. In particular, the DRC asserts that Guinea has failed to explain why Mr. Diallo, as the sole *gérant* and *associé* of the two companies, could not have directed that payments be made to him.

The Court considers whether Guinea has established that Mr. Diallo was receiving remuneration prior to his detention and that such remuneration was in the amount of US$25,000 per month.

The Court first observes that Guinea provides no proof that Mr. Diallo was earning US$25,000 per month as *gérant* of the two companies. There are no bank account or tax records; there are no accounting records of either company showing that it had made such payments. Moreover, the Court considers that there is evidence suggesting that Mr. Diallo was not receiving US$25,000 per month in remuneration from the two companies prior to his detentions. First, the evidence regarding Africom-Zaire and Africontainers-Zaire strongly indicates that neither of the companies was conducting business — apart from the attempts to collect debts allegedly owed to each company — during the years immediately prior to Mr. Diallo's detentions. Secondly, in contrast to Guinea's claim in the present phase of the proceedings devoted to compensation that Mr. Diallo was receiving monthly remuneration of US$25,000 Guinea told the Court, during the preliminary objections phase, that Mr. Diallo was "already impoverished in 1995". This statement to the Court is consistent with the fact that, on 12 July 1995, Mr. Diallo obtained in the DRC, at his request, a "Certificate of Indigency" declaring him "temporarily destitute" and thus permitting him to avoid payments that would otherwise have been required in order to register a judgment in favour of one of the companies. The Court therefore concludes that Guinea has failed to establish that Mr. Diallo was receiving remuneration from Africom-Zaire and Africontainers-Zaire on a monthly basis in the period immediately prior to his detentions in 1995-1996 or that such remuneration was at the rate of US$25,000 per month.

The Court notes that Guinea also does not explain how Mr. Diallo's detentions caused an interruption in any remuneration that Mr. Diallo might have been receiving in his capacity as *gérant* of the two companies. If the companies were in fact in a position to pay Mr. Diallo as of the time that he was detained, it is reasonable to expect that employees could have continued to make the necessary payments to the *gérant*. Moreover, Mr. Diallo was detained from 5 November 1995 to 10 January 1996, then released and then detained again from 25 January 1996 to 31 January 1996. Thus, there was a period of two weeks during which there was an opportunity for Mr. Diallo to make arrangements to receive any remuneration that the companies allegedly had failed to pay him during the initial 66-day period of detention.

Under these circumstances, the Court considers that Guinea has not proven that Mr. Diallo suffered a loss of professional remuneration as a result of his unlawful detentions.

As to the alleged loss of professional remuneration following Mr. Diallo's expulsion, the Court recalls that Guinea asserts that the unlawful expulsion of Mr. Diallo by the DRC deprived him of the ability to continue receiving remuneration as the *gérant* of Africom-Zaire and Africontainers-Zaire. Based on its claim that Mr. Diallo received remuneration of US$25,000 per month prior to his detentions in 1995-1996, Guinea asserts that, during the period that has elapsed since Mr. Diallo's expulsion on 31 January 1996, he has lost additional "professional income" in the amount of US$4,755,500. Guinea further asserts that this amount should be adjusted upward to account for inflation, such that its estimate of Mr. Diallo's loss of professional remuneration since his expulsion is US$6,430,148. The Court notes that the DRC reiterates its position regarding the claim for unpaid remuneration from the period of Mr. Diallo's detentions, in particular the lack of evidence to support the claim that Mr. Diallo was receiving remuneration of US$25,000 per month prior to his detentions and expulsion.

The Court observes that it has already rejected the claim for loss of professional remuneration during the period of Mr. Diallo's detentions. It considers that those reasons also apply with respect to Guinea's claim relating to the period following Mr. Diallo's expulsion. Moreover, Guinea's claim with respect to Mr. Diallo's post-expulsion remuneration is highly speculative and assumes that Mr. Diallo would have continued to receive US$25,000 per month had he not been unlawfully expelled. While an award of compensation relating to loss of future earnings inevitably involves some uncertainty, such a claim cannot be purely speculative. Thus, the Court concludes that no compensation can be awarded for Guinea's claim relating to unpaid remuneration following Mr. Diallo's expulsion.

The Court therefore awards no compensation for remuneration that Mr. Diallo allegedly lost during his detentions and following his expulsion.

3. *Alleged deprivation of potential earnings* (paras. 51-55)

The Court notes that Guinea makes an additional claim that it describes as relating to Mr. Diallo's "potential earnings". Specifically, Guinea states that Mr. Diallo's unlawful detentions and subsequent expulsion resulted in a decline in the value of the two companies and the dispersal of their assets. Guinea also asserts that Mr. Diallo was unable to assign his holdings (*parts sociales*) in these companies to third parties and that his loss of potential earnings can be valued at 50 per cent of the "exchange value of the holdings", a sum that, according to Guinea, totals US$4,360,000. The Court notes that the DRC considers that Guinea's calculation of the alleged loss to Mr. Diallo is based on assets belonging to the two companies, and not assets that belong to Mr. Diallo in his individual capacity. Furthermore, the DRC contends that Guinea provides no proof that the companies' assets have, in fact, been lost or that specific assets of the two companies to which Guinea refers could not be sold on the open market.

The Court considers that Guinea's claim concerning "potential earnings" amounts to a claim for a loss in the value of the companies allegedly resulting from Mr. Diallo's detentions and expulsion. Such a claim is beyond the scope of the proceedings, given this Court's prior decision that Guinea's claims relating to the injuries alleged to have been caused to the companies are inadmissible. For these reasons, the Court awards no compensation to Guinea in respect of its claim relating to the "potential earnings" of Mr. Diallo.

*

Having analysed the components of Guinea's claim in respect of material injury caused to Mr. Diallo as a result of the DRC's unlawful conduct, the Court awards compensation to Guinea in the amount of US$10,000.

III. *Total sum awarded and post-judgment interest* (paras. 56-57)

The Court concludes that the total sum awarded to Guinea is US$95,000 to be paid by 31 August 2012. The Court expects timely payment and has no reason to assume that the DRC will not act accordingly. Nevertheless, considering that the award of post-judgment interest is consistent with the practice of other international courts and tribunals, the Court decides that, should payment be delayed, post-judgment interest on the principal sum due will accrue as from 1 September 2012 at an annual rate of 6 per cent. This rate has been fixed taking into account the prevailing interest rates on the international market and the importance of prompt compliance. The Court recalls that the sum awarded to Guinea in the exercise of diplomatic protection of Mr. Diallo is intended to provide reparation for the latter's injury.

IV. Procedural costs (paras. 58-60)

The Court notes that Guinea requests the Court to award costs in its favour, in the amount of US$500,000, because, "as a result of having been forced to institute the present proceedings, the Guinean State has incurred unrecoverable costs which it should not, in equity, be required to bear". The DRC asks the Court "to dismiss the request for the reimbursement of costs submitted by Guinea and to leave each State to bear its own costs of the proceedings, including the costs of its counsel, advocates and others".

The Court recalls that Article 64 of the Statute provides that, "[u]nless otherwise decided by the Court, each party shall bear its own costs". While the general rule has so far always been followed by the Court, Article 64 implies that there may be circumstances which would make it appropriate for the Court to allocate costs in favour of one of the parties. However, the Court does not consider that any such circumstances exist in the present case. Accordingly, each party shall bear its own costs.

V. Operative part (para. 61)

"For these reasons,

THE COURT,

(1) By fifteen votes to one,

Fixes the amount of compensation due from the Democratic Republic of the Congo to the Republic of Guinea for the non-material injury suffered by Mr. Diallo at US$85,000;

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue, Gaja, Sebutinde; *Judge* ad hoc Mahiou;

AGAINST: *Judge* ad hoc Mampuya;

(2) By fifteen votes to one,

Fixes the amount of compensation due from the Democratic Republic of the Congo to the Republic of Guinea for the material injury suffered by Mr. Diallo in relation to his personal property at US$10,000;

IN FAVOUR: *President* Tomka; *Vice-President* Sepulveda-Amor; *Judges* Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue, Gaja, Sebutinde; *Judge* ad hoc Mahiou;

AGAINST: *Judge* ad hoc Mampuya;

(3) By fourteen votes to two,

Finds that no compensation is due from the Democratic Republic of the Congo to the Republic of Guinea with regard to the claim concerning material injury allegedly suffered by Mr. Diallo as a result of a loss of professional remuneration during his unlawful detentions and following his unlawful expulsion;

IN FAVOUR: *President* Tomka; *Vice-President* Sepulveda-Amor; *Judges* Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Greenwood, Xue, Donoghue, Gaja, Sebutinde; *Judge* ad hoc Mampuya;

AGAINST: *Judge* Yusuf; *Judge* ad hoc Mahiou;

(4) Unanimously,

Finds that no compensation is due from the Democratic Republic of the Congo to the Republic of Guinea with regard to the claim concerning material injury allegedly suffered by Mr. Diallo as a result of a deprivation of potential earnings;

(5) Unanimously,

Decides that the total amount of compensation due under points 1 and 2 above shall be paid by 31 August 2012 and that, in case it has not been paid by this date, interest on the principal sum due from the Democratic Republic of the Congo to the Republic of Guinea will accrue as from 1 September 2012 at an annual rate of 6 per cent;

(6) By fifteen votes to one,

Rejects the claim of the Republic of Guinea concerning the costs incurred in the proceedings.

IN FAVOUR: *President* Tomka; *Vice-President* Sepulveda-Amor; *Judges* Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue, Gaja, Sebutinde; *Judge* ad hoc Mampuya;

AGAINST: *Judge* ad hoc Mahiou"

*

Judge Cançado Trindade appended a separate opinion to the Judgment of the Court; Judges Yusuf and Greenwood appended declarations to the Judgment of the Court; Judges *ad hoc* Mahiou and Mampuya appended separate opinions to the Judgment of the Court.

3. Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)

On 23 June 1999 the Democratic Republic of the Congo filed an Application instituting proceedings against Uganda for "acts of armed aggression perpetrated . . . in flagrant violation of the Charter of the United Nations and of the Charter of the Organization of African Unity" (see *I.C.J. Annual Report 1998-1999, et seq.*).

In its Application, the Democratic Republic of the Congo requested the Court to adjudge and declare that Uganda was guilty of an act of aggression contrary to Article 2, paragraph 4, of the United Nations Charter and that it was committing repeated violations of the Geneva Conventions of 1949 and the Additional Protocols of 1977. The Democratic Republic of the Congo further asked the Court to adjudge and declare that all Ugandan armed forces and Ugandan nationals, both natural and legal persons, should be withdrawn from Congolese territory, and that the Democratic Republic of the Congo was entitled to compensation (see *I.C.J. Annual Report 1998-1999*).

In its Counter-Memorial, filed on 20 April 2001, Uganda presented three counter-claims. The first concerned alleged acts of aggression against it by the Democratic Republic of the Congo; the second related to attacks on Ugandan diplomatic premises and personnel in Kinshasa and on Ugandan nationals for which the Democratic Republic of the Congo was alleged to be responsible; and the third dealt with alleged violations by the Democratic Republic of the Congo of the Lusaka Agreement (see *I.C.J. Annual Report 2000-2001*).

By an Order of 29 November 2001 the Court found that the first two of the counter-claims submitted by Uganda against the Democratic Republic of the Congo were "admissible as such and [formed] part of the current proceedings", but that the third was not (see *I.C.J. Annual Report 2001-2002*).

Public hearings on the merits of the case were held from 11 to 29 April 2005 (see *I.C.J. Annual Report 2004-2005*).

In the Judgment which it rendered on 19 December 2005 (see *I.C.J. Annual Report 2005-2006*), the Court found in particular that Uganda, by engaging in military activities against the Democratic Republic of the Congo on the latter's territory, by occupying Ituri and by actively extending support to irregular forces having operated on the territory of the DRC, had violated the principle of non-use of force in international relations and the principle of non-intervention; that it had violated, in the course of hostilities between Ugandan and Rwandan military forces in Kisangani, its obligations under international human rights law and international humanitarian law; that it had violated, by the conduct of its armed forces towards the Congolese civilian population and in particular as an occupying Power in Ituri district, other obligations incumbent on it under international human rights law and international humanitarian law; and that it had violated its obligations under international law by acts of looting, plundering and exploitation of Congolese natural resources committed by members of its armed forces in the territory of the DRC and by its failure to prevent such acts as an occupying Power in Ituri district.

Regarding the second counter-claim submitted by Uganda, having rejected the first, the Court found that the Democratic Republic of the Congo had for its part violated obligations owed to the Republic of Uganda under the Vienna Convention on Diplomatic Relations of 1961, through maltreatment of or failure to protect the persons and property protected by the said Convention.

The Court therefore found that the Parties were under obligation to one another to make reparation for the injury caused; it decided that, failing agreement between the Parties, the question of reparation would be settled by the Court. It reserved for this purpose the subsequent procedure in the case. Since then, the Parties have transmitted to the Court certain information concerning the negotiations they are holding to settle the question of reparation, as referred to in points (6) and (14) of the operative clause of the Judgment and paragraphs 260, 261 and 344 of the reasoning in the Judgment. The case therefore remains pending.

4. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)

On 2 July 1999 Croatia instituted proceedings against Serbia (then known as the Federal Republic of Yugoslavia (FRY)) with respect to a dispute concerning alleged violations of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide alleged to have been committed between 1991 and 1995.

In its Application, Croatia contended *inter alia* that, "[b]y directly controlling the activity of its armed forces, intelligence agents, and various paramilitary detachments, on the territory of . . . Croatia, in the Knin region, eastern and western Slavonia, and Dalmatia", Serbia was liable for "ethnic cleansing" committed against Croatian citizens, "a form of genocide which resulted in large numbers of Croatian citizens being displaced, killed, tortured, or illegally detained, as well as [causing] extensive property destruction".

Accordingly, Croatia requested the Court to adjudge and declare that Serbia had "breached its legal obligations" to Croatia under the Genocide Convention and that it had

> "an obligation to pay to . . . Croatia, in its own right and as *parens patriae* for its citizens, reparations for damages to persons and property, as well as to the Croatian economy and environment caused by the foregoing violations of international law in a sum to be determined by the Court".

As basis for the jurisdiction of the Court, Croatia invoked Article IX of the Genocide Convention, to which, it claims, both States are parties.

By an Order of 14 September 1999, the Court fixed 14 March 2000 and 14 September 2000 as the respective time-limits for the filing of a Memorial by Croatia and a Counter-Memorial by Serbia. These time-limits were twice extended, by Orders of 10 March 2000 and 27 June 2000. Croatia filed its Memorial within the time-limit as extended by the latter Order.

On 11 September 2002, within the time-limit for the filing of it Counter-Memorial as extended by the Order of 27 June 2000, Serbia raised certain preliminary objections on jurisdiction and admissibility. I maintained in particular that the Court lacked jurisdiction over the dispute because the FRY was not party to the Genocide Convention on 2 July 1999, the date proceedings were instituted before the Court. Serbia contended that it did not become party to the Convention until 10 June 2001, after its admission to the United Nations on 1 November 2000, and, in addition, that it never became bound by Article IX of the Genocide Convention because it entered a reservation to that Article when it acceded to the Convention. Serbia further argued that Croatia's Application was inadmissible in so far as the most serious incidents and omissions described therein occurred prior to 27 April 1992, the date on which the FRY came into being, and could not therefore be attributed to it. Lastly, it asserted that certain specific claims made by Croatia were inadmissible or moot. Pursuant to Article 79 of the Rules of Court, the proceedings on the merits were suspended. Croatia filed a written statement of its observations and submissions on Serbia's preliminary objections on 25 April 2003, within the time-limit fixed by the Court.

Public hearings on the preliminary objections on jurisdiction and admissibility were held from 26 to 30 May 2008. (See *I.C.J. Annual Report 2007-2008.*)

On 18 November 2008, the Court rendered its judgment on the preliminary objections (*I.C.J. Reports 2008*, p. 412; *I.C.J. Yearbook 2008-2009*, p. 230).

In its Judgment the Court found *inter alia* that, subject to its statement concerning the second preliminary objection raised by the Respondent, it had jurisdiction, on the basis of Article IX of the Genocide Convention, to entertain Croatia's Application. The Court added that Serbia's second preliminary objection did not, in the circumstances of the case, possess an exclusively preliminary character. It then rejected the third preliminary objection raised by Serbia.

By an Order of 20 January 2009, the President of the Court fixed 22 March 2010 as the time-limit for the filing of the Counter-Memorial of Serbia. That pleading, containing counter-claims, was filed within the time-limit thus prescribed. By an Order of 4 February 2010, the Court directed the submission of a Reply by the Republic of Croatia and a Rejoinder by the Republic of Serbia concerning the claims presented by the Parties. It fixed 20 December 2010 and 4 November 2011, respectively as the time-limits for the filing of those written pleadings. Those pleadings were filed within the time-limits thus fixed.

By an Order of 23 January 2012, the Court authorized the submission by Croatia of an additional written pleading relating solely to the counter-claims submitted by Serbia. It fixed 30 August 2012 as the time-limit for the filing of that written pleading.

5. *Territorial and Maritime Dispute* (*Nicaragua* v. *Colombia*)

On 6 December 2001 Nicaragua filed an Application instituting proceedings against Colombia in respect of a dispute concerning "a group of related legal issues subsisting" between the two States "concerning title to territory and maritime delimitation" in the western Caribbean.

In its Application, Nicaragua requested the Court to adjudge and declare:

> "*First*, that . . . Nicaragua has sovereignty over the Islands of Providencia, San Andres and Santa Catalina and all the appurtenant islands and keys, and also over the Roncador, Serrana, Serranilla and Quitasueño keys (in so far as they are capable of appropriation);
>
> *Second*, in the light of the determinations concerning title requested above, the Court is asked further to determine the course of the single maritime boundary between the areas of continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Colombia, in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary."

Nicaragua further indicated that it

> "reserves the right to claim compensation for elements of unjust enrichment consequent upon Colombian possession of the Islands of San Andres and Providencia as well as the keys and maritime spaces up to the 82 meridian, in the absence of lawful title".

It also "reserves the right to claim compensation for interference with fishing vessels of Nicaraguan nationality or vessels licensed by Nicaragua" (see *I.C.J. Annual Report 2001-2002, et seq.*).

As basis for the Court's jurisdiction, Nicaragua invokes Article XXXI of the Pact of Bogotá, to which both Nicaragua and Colombia are parties, as well as the declarations of the two States recognizing the compulsory jurisdiction of the Court.

By an Order of 26 February 2002 (*I.C.J. Reports 2002*, p. 189), the Court fixed 28 April 2003 and 28 June 2004 as the time-limits for the filing of a Memorial by Nicaragua and of a Counter-Memorial by Colombia. The Memorial of Nicaragua was filed within the time-limit thus fixed.

Copies of the pleadings and documents annexed were requested by the Governments of Honduras, Jamaica, Chile, Peru, Ecuador and Venezuela by virtue of Article 53, paragraph 1, of the Rules of Court. Pursuant to that same provision, the Court, after ascertaining the views of the Parties acceded to those requests.

On 21 July 2003, within the time-limit for the submission of its Counter-Memorial, Colombia filed preliminary objections to the jurisdiction of the Court. Public hearings on the preliminary objections were held from 4 to 8 June 2007.

On 13 December 2007, the Court rendered its Judgment (*I.C.J. Reports 2007 (II)*, p. 832 and *I.C.J. Yearbook 2007-2008*, p. 261), in which it found that Nicaragua's Application was admissible in so far as it concerned sovereignty over the maritime features claimed by the Parties other than the islands of San Andrés, Providencia and Santa Catalina, and in respect of the maritime delimitation between the Parties (see *I.C.J. Annual Report 2007-2008*).

By an Order of 11 February 2008 (*I.C.J. Reports 2008*, p. 3) the President of the Court fixed 11 November 2008 as the time-limit for the filing of the Counter-Memorial of Colombia. The Counter-Memorial was filed within the time-limit thus fixed.

By an Order of 18 December 2008 (*I.C.J. Reports 2008*, p. 645), the Court directed Nicaragua to submit a Reply and Colombia a Rejoinder, and fixed 18 September 2009 and 18 June 2010 as the respective time-limits for the filing of those written pleadings, which were filed within the time-limits thus fixed.

On 25 February 2010, Costa Rica filed an Application for permission to intervene in the case. In its Application, Costa Rica states among other things that "[b]oth Nicaragua and Colombia, in their boundary claims against each other, claim maritime area to which Costa Rica is entitled". Costa Rica has indicated in its Application that it is not seeking to intervene in the proceedings as a party. The Application was immediately communicated to Nicaragua and Colombia, and the Court fixed 26 May 2010 as the time-limit for the filing of written observations by those States. The written observations were filed within the time-limit thus fixed.

On 10 June 2010, the Republic of Honduras also filed an Application for permission to intervene in the case. It is asserted in the Application that Nicaragua, in its dispute with Colombia, is putting forward maritime claims that lie in an area of the Caribbean Sea in which Honduras has rights and interests. Honduras states in its Application that it is seeking primarily to intervene in the proceedings as a party. Honduras's Application was immediately communicated to Nicaragua and Colombia. The President of the Court fixed 2 September 2010 as the time-limit for these two States to furnish written observations. The written observations were filed within the time-limit thus fixed.

Public hearings on the admission of Costa Rica's Application for permission to intervene were held from 11 to 15 October 2010.

In its Judgment of 4 May 2011, the Court, by nine votes to seven, found that the Application for permission to intervene in the proceedings filed by Costa Rica could not be granted.

Public hearings on the admission of Honduras's Application for permission to intervene took place from 18 to 22 October 2010.

In its Judgment of 4 May 2011, the Court, by thirteen votes to two, found that the Application for permission to intervene in the proceedings filed by Honduras could not be granted.

Public hearings on the merits of the case were held from 23 April to 4 May 2012. At the conclusion of their oral arguments, the Parties presented the following final submissions to the Court:

For the Republic of Nicaragua,

> "In accordance with Article 60 of the Rules of Court and having regard to the pleadings, written and oral, the Republic of Nicaragua,
>
> I. May it please the Court to adjudge and declare that:
>
> (1) The Republic of Nicaragua has sovereignty over all maritime features off her Caribbean coast not proven to be part of the 'San Andrès Archipelago' and in particular the following cays: the Cayos de Albuquerque; the Cayos del Este Sudeste; the Cay of Roncador; North Cay, Southwest Cay and any other cays on the bank of Serrana; East Cay, Beacon Cay and any other cays on the bank of Serranilla; and Low Cay and any other cays on the bank of Bajo Nuevo.
>
> (2) If the Court were to find that there are features on the bank of Quitasueño that qualify as islands under international law, the Court is requested to find that sovereignty over such features rests with Nicaragua.
>
> (3) The appropriate form of delimitation, within the geographical and legal framework constituted by the mainland coasts of Nicaragua and Colombia, is a continental shelf boundary dividing by equal parts the overlapping entitlements to a continental shelf of both Parties.
>
> (4) The islands of San Andrès and Providencia and Santa Catalina be enclaved and accorded a maritime entitlement of 12 nautical miles, this being the appropriate equitable solution justified by the geographical and legal framework.
>
> (5) The equitable solution for any cay, that might be found to be Colombian, is to delimit a maritime boundary by drawing a 3-nautical-mile enclave around them.

> II. Further, the Court is requested to adjudge and declare that:
>
> Colombia is not acting in accordance with her obligations under international law by stopping and otherwise hindering Nicaragua from accessing and disposing of her natural resources to the east of the 82nd meridian."

For the Republic of Colombia,

> "In accordance with Article 60 of the Rules of Court, for the reasons set out in Colombia's written and oral pleadings, taking into account the Judgment on Preliminary Objections and rejecting any contrary submissions of Nicaragua, Colombia requests the Court to adjudge and declare:
>
> (*a*) That Nicaragua's new continental shelf claim is inadmissible and that, consequently, Nicaragua's Submission I (3) is rejected.
>
> (*b*) That Colombia has sovereignty over all the maritime features in dispute between the Parties: Alburquerque, East-Southeast, Roncador, Serrana, Quitasueño, Serranilla and Bajo Nuevo, and all their appurtenant features, which form part of the Archipelago of San Andrés.
>
> (*c*) That the delimitation of the exclusive economic zone and the continental shelf between Nicaragua and Colombia is to be effected by a single maritime boundary, being the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the Parties is measured . . .
>
> (*d*) That Nicaragua's written Submission II is rejected."

The Court has begun its deliberation and will deliver its Judgment at a public sitting, the date of which will be announced in due course.

6. *Maritime Dispute (Peru* v. *Chile)*

On 16 January 2008 Peru filed an Application instituting proceedings against Chile before the Court concerning a dispute in relation to

> "the delimitation of the boundary between the maritime zones of the two States in the Pacific Ocean, beginning at a point on the coast called Concordia, . . . the terminal point of the land boundary established pursuant to the Treaty . . . of 3 June 1929"[1]

and also to the recognition in favour of Peru of a "maritime zone lying within 200 nautical miles of Peru's coast, and thus appertaining to Peru, but which Chile considers to be part of the high seas".

---

[1] Treaty between Chile and Peru for the settlement of the dispute regarding Tacna and Arica, signed at Lima on 3 June 1929.

In its Application Peru claims that "the maritime zones between Chile and Peru have never been delimited by agreement or otherwise" and that, accordingly, "the delimitation is to be determined by the Court in accordance with customary international law". Peru states that, "since the 1980s, [it] has consistently endeavoured to negotiate the various issues in dispute, but . . . has constantly met a refusal from Chile to enter into negotiations". It asserts that a Note of 10 September 2004 from the Minister for Foreign Affairs of Chile to the Minister for Foreign Affairs of Peru made further attempts at negotiation impossible.

Peru,

> "requests the Court to determine the course of the boundary between the maritime zones of the two States in accordance with international law . . . and to adjudge and declare that Peru possesses exclusive sovereign rights in the maritime area situated within the limit of 200 nautical miles from its coast but outside Chile's exclusive economic zone or continental shelf".

As basis for the Court's jurisdiction, Peru invokes Article XXXI of the American Treaty on Pacific Settlement (the Pact of Bogotá) of 30 April 1948, to which both States are parties without reservation.

By an Order of 31 March 2008, the Court fixed 20 March 2009 and 9 March 2010 as the respective time-limits for the filing of a Memorial by Peru and a Counter-Memorial by Chile. Those pleadings were filed within the time-limits thus prescribed.

Colombia and Ecuador, relying on Article 53, paragraph 1, of the Rules of Court, requested copies of the pleadings and annexed documents produced in the case. In accordance with that provision, the Court, after ascertaining the views of the Parties, acceded to those requests.

By an Order of 27 April 2010, the Court authorized the submission of a Reply by Peru and a Rejoinder by Chile. It fixed 9 November 2010 and 11 July 2011 as the respective time-limits for the filing of those pleadings. The Reply and Rejoinder were filed within the time-limits thus fixed.

Pursuant to Article 54, paragraph 1, of the Rules of Court, the Court fixed Monday 3 December 2012 as the date for the opening of the oral proceedings in the case.

7. *Aerial Herbicide Spraying (Ecuador v. Colombia)*

On 31 March 2008, Ecuador filed an Application instituting proceedings against Colombia with respect to a dispute concerning the alleged "aerial spraying [by Colombia] of toxic herbicides at locations near, at and across its border with Ecuador".

Ecuador maintains that "the spraying has already caused serious damage to people, to crops, to animals, and to the natural environment on the Ecuadorian side of the frontier, and poses a grave risk of further damage over time". It further contends that it has made "repeated and sustained efforts to negotiate an end to the fumigations" but that "these negotiations have proved unsuccessful". (See *I.C.J. Annual Report 2007-2008, et seq.*)

Ecuador accordingly requests the Court "to adjudge and declare" that:

"*(a)* Colombia has violated its obligations under international law by causing or allowing the deposit on the territory of Ecuador of toxic herbicides that have caused damage to human health, property and the environment;

(b) Colombia shall indemnify Ecuador for any loss or damage caused by its internationally unlawful acts, namely the use of herbicides, including by aerial dispersion, and in particular:

(i) death or injury to the health of any person or persons arising from the use of such herbicides; and
(ii) any loss of or damage to the property or livelihood or human rights of such persons; and
(iii) environmental damage or the depletion of natural resources; and
(iv) the costs of monitoring to identify and assess future risks to public health, human rights and the environment resulting from Colombia's use of herbicides; and
(v) any other loss or damage; and

(c) Colombia shall:

(i) respect the sovereignty and territorial integrity of Ecuador; and
(ii) forthwith, take all steps necessary to prevent, on any part of its territory, the use of any toxic herbicides in such a way that they could be deposited onto the territory of Ecuador; and
(iii) prohibit the use, by means of aerial dispersion, of such herbicides in Ecuador, or on or near any part of its border with Ecuador."

As basis for the Court's jurisdiction, Ecuador invokes Article XXXI of the American Treaty on Pacific Settlement (the "Pact of Bogota") of 30 April 1948, to which both States are parties. Ecuador also relies on Article 32 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

In its Application, Ecuador reaffirms its opposition "to the export and consumption of illegal narcotics" but stresses that the issues it presents to the Court "relate exclusively to the methods and locations of Colombia's operations to eradicate illicit coca and poppy plantations — and the harmful effects in Ecuador of such operations".

By an Order of 30 May 2008, the Court fixed 29 April 2009 and 29 March 2010 as the respective time-limits for the filing of a Memorial by Ecuador and a Counter-Memorial by Colombia. Those pleadings were filed within the time-limits thus prescribed.

By an Order of 25 June 2010, the Court directed the submission of a Reply by Ecuador and a Rejoinder by Colombia. It fixed 31 January and 1 December 2011, respectively, as the time-limits for the filing of those pleadings. The Reply of Ecuador was filed within the time-limit thus fixed.

By an Order of 19 October 2011, the President of the Court extended from 1 December 2011 to 1 February 2012 the time-limit for the filing of a Rejoinder by Colombia. That pleading was filed within the time-limit thus extended.

8. *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia* v. *Greece)*

On 17 November 2008, the former Yugoslav Republic of Macedonia instituted proceedings against Greece for what it described as "a flagrant violation of [Greece's] obligations under Article 11" of the Interim Accord signed by the Parties on 13 September 1995.

In its Application, the former Yugoslav Republic of Macedonia requested the Court "to protect its rights under the Interim Accord and to ensure that it is allowed to exercise its rights as an independent State acting in accordance with international law, including the right to pursue membership of relevant international organisations".

It requested the Court to order Greece to "immediately take all necessary steps to comply with its obligations under Article 11, paragraph 1" and "to cease and desist from objecting in any way, whether directly or indirectly, to the Applicant's membership of the North Atlantic Treaty Organization and/or of any other 'international, multilateral and regional organizations and institutions' of which [Greece] is a member . . .".

The Applicant invoked as a basis for the jurisdiction of the Court Article 21, paragraph 2, of the Interim Accord of 13 September 1995, which provides that "[a]ny difference or dispute that arises between the Parties concerning the interpretation or implementation of this Interim Accord may be submitted by either of them to the International Court of Justice, except for the differences referred to in Article 5, paragraph 1".

By an Order of 20 January 2009, the Court fixed 20 July 2009 as the time-limit for the filing of a Memorial by the former Yugoslav Republic of Macedonia and 20 January 2010 as the time-limit for the filing of a Counter-Memorial by Greece. Those pleadings were filed within the time-limits thus prescribed.

By an Order of 12 March 2010, the Court authorized the submission of a Reply by the former Yugoslav Republic of Macedonia and a Rejoinder by Greece. It fixed 9 June 2010 and 27 October 2010 as the respective time-limits for the filing of those pleadings. The Reply of the former Yugoslav Republic of Macedonia and the Rejoinder of Greece were filed within the time-limit thus prescribed.

Public hearings were held from 21 to 30 March 2011. At the end of those hearings, on the basis of the evidence produced and the legal arguments presented in their written and oral pleadings, the Parties presented their final submissions.

The former Yugoslav Republic of Macedonia:

> "request[ed] the Court:
>
> (i) to reject the Respondent's objections as to the jurisdiction of the Court and the admissibility of the Applicant's claims;
>
> (ii) to adjudge and declare that the Respondent, through its State organs and Agents, has violated its obligations under Article 11, paragraph 1, of the Interim Accord; and
>
> (iii) to order that the Respondent immediately take all necessary steps to comply with its obligations under Article 11, paragraph 1, of the Interim Accord, and to cease and desist from objecting in any way, whether directly or indirectly, to the Applicant's membership of the North Atlantic Treaty Organization and/or of any other 'international, multilateral and regional organizations and institutions' of which the Respondent is a member, in circumstances where the Applicant is to be referred to in such organization or institution by the designation provided for in paragraph 2 of United Nations Security Council resolution 817 (1993)."

Greece:

> "request[ed] the Court to adjudge and declare:
>
> (i) that the case brought by the Applicant before the Court does not fall within the jurisdiction of the Court and that the Applicant's claims are inadmissible;
>
> (ii) in the event that the Court finds that it has jurisdiction and that the claims are admissible, that the Applicant's claims are unfounded."

At a public sitting held on 5 December 2011, the Court delivered its Judgment (*I.C.J. Reports 2011 (II)*, p. 644), a summary of which is given below.

Reasoning of the Court

I. Factual background of the case (paras. 15-22)

The Court began by reciting the history of the proceedings and the submissions of the Parties as set out here above.

II. Jurisdiction of the Court and admissibility of the Application (paras. 23-61)

The Court recalls that the Applicant invoked as a basis for the Court's jurisdiction Article 21, paragraph 2, of the Interim Accord, under the terms of which any "difference or dispute" as to the "interpretation or implementation" of the Interim Accord falls within the jurisdiction of the Court, with the exception of the "difference" referred to in Article 5, paragraph 1, of the Interim Accord, which reads as follows:

> "The Parties agree to continue negotiations under the auspices of the Secretary-General of the United Nations pursuant to Security Council resolution 845 (1993) with a view to reaching agreement on the difference described in that resolution and in Security Council resolution 817 (1993)."

The Respondent claims that the Court has no jurisdiction to entertain the present case and that the Application is inadmissible based on the following reasons. Firstly, the Respondent submits that the dispute concerns the difference over the name of the Applicant referred to in Article 5, paragraph 1, of the Interim Accord and that, consequently, it is excluded from the Court's jurisdiction by virtue of the exception provided in Article 21, paragraph 2. Secondly, the Respondent alleges that the dispute concerns conduct attributable to NATO and its member States, which is not subject to the Court's jurisdiction in the present case. Thirdly, the Respondent claims that the Court's Judgment in the present case would be incapable of effective application because it could not effect the Applicant's admission to NATO or other international, multilateral and regional organizations or institutions. Fourthly, the Respondent submits that the exercise of jurisdiction by the Court would interfere with ongoing diplomatic negotiations mandated by the Security Council concerning the difference over the name and thus would be incompatible with the Court's judicial function.

In respect of the first objection raised by the Respondent, the Court considers it to be clear from the text of Article 5, paragraph 1, and Article 21, paragraph 2, of the Interim Accord, that the "difference" referred to therein is the difference over the definitive name of the Applicant and not disputes regarding the Respondent's obligation not to object to the Applicant's admission to international organizations, unless the Applicant is to be referred to in the organization in question differently than in resolution 817 (1993). Accordingly, the Court decides not to uphold that objection.

With regard to the second objection, the Court considers that the conduct forming the object of the Application is the Respondent's alleged objection to the Applicant's admission to NATO, and that, on the merits, the Court will only have to determine whether or not that conduct demonstrates that the Respondent failed to comply with its obligations under the Interim Accord, irrespective of NATO's final decision on the

Applicant's membership application. Accordingly, the Court decides not to uphold that objection.

In respect of the third objection, the Court observes that the Applicant is not requesting it to reverse NATO's decision in the Bucharest Summit, but to determine whether the Respondent violated its obligations under the Interim Accord as a result of its conduct. It concludes that a Judgment of the Court would be capable of being applied effectively, because it would affect the Parties' existing rights and obligations under the Interim Accord. Accordingly, it decides not to uphold that objection.

As regards the fourth objection, the Court notes that the Parties included a provision conferring jurisdiction on the Court (Art. 21) in an agreement that also required them to continue negotiations on the dispute between them over the name of the Applicant (Art. 5, para. 1). It takes the view that, had the Parties considered that a future ruling by the Court would interfere with diplomatic negotiations mandated by the Security Council, they would not have agreed to refer to it disputes concerning the interpretation or implementation of the Interim Accord. Accordingly, it decides not to uphold that objection.

In light of the foregoing, the Court concludes that it has jurisdiction over the dispute and that the Application is admissible.

III. Whether the Respondent failed to comply with the obligation under Article 11, paragraph 1, of the Interim Accord (paras. 62-113)

The Court then considers whether the Respondent objected to the Applicant's admission to NATO, within the meaning of the first clause of Article 11, paragraph 1, of the Interim Accord.

It begins by examining the meaning of that clause and finds in that connection that the Respondent is under an obligation not to object to "the application by or membership of" the Applicant in NATO. It notes that the Parties agree that the obligation "not to object", which is an obligation of conduct, rather than one of result, does not require the Respondent actively to support the Applicant's admission to international organizations. The Court further observes that nothing in the text of that clause limits the Respondent's obligation not to object to organizations that use a voting procedure to decide on the admission of new members. It considers that there is no indication that the Parties intended to exclude from Article 11, paragraph 1, organizations like NATO which follow procedures which do not require a vote. Moreover, the Court notes that the question before it is not whether the decision taken by NATO at the Bucharest Summit with respect to the Applicant's candidacy was due exclusively, principally, or marginally to the Respondent's objection, but whether the Respondent, by its own conduct, did not comply with the obligation not to object contained in Article 11, paragraph 1, of the Interim Accord. The Court also observes that the Respondent did not take the position that any objection by it at the Bucharest Summit was based on grounds unrelated to the difference over the name. Therefore, it does not consider it necessary to decide whether the Respondent retains a right to object to the Applicant's admission to international organizations on such other grounds.

The Court then considers whether the Respondent "objected" to the Applicant's admission to NATO. To this end, it turns to the evidence submitted to it by the Parties, in order to decide whether the record supports the Applicant's contention that the Respondent objected to the Applicant's membership in NATO. The Court notes that, in support of its position, the Applicant refers to diplomatic correspondence of the Respondent before and after the Bucharest Summit and to statements by senior officials of the Respondent during the same period. The Court observes that the Respondent does not dispute the authenticity of these statements and it examines them as evidence of the Respondent's conduct in connection with the Bucharest Summit, in light of its obligation under Article 11, paragraph 1, of the Interim Accord. In the view of the Court, the evidence submitted to it demonstrates that through formal diplomatic correspondence and through statements of its senior officials, the Respondent made clear before, during and after the Bucharest Summit that the resolution of the difference over the name was the "decisive criterion" for the Respondent to accept the Applicant's admission to NATO. The Court notes that the Respondent manifested its objection to the Applicant's admission to NATO at the Bucharest Summit, citing the fact that the difference regarding the Applicant's name remained unresolved. The Court concludes that the Respondent objected to the Applicant's admission to NATO, within the meaning of the first clause of Article 11, paragraph 1, of the Interim Accord.

The Court then turns to the question whether the Respondent's objection to the Applicant's admission to NATO at the Bucharest Summit fell within the exception contained in the second clause of Article 11, paragraph 1, of the Interim Accord.

It considers that, in this clause, the Parties agree that the Respondent "reserves the right to object to any membership" by the Applicant in an international, multilateral or regional organization or institution of which the Respondent is a member "if and to the extent the [Applicant] is to be referred to in such organization or institution differently than in paragraph 2 of United Nations Security Council resolution 817 (1993)". The Court recalls that paragraph 2 of resolution 817 recommends that the Applicant be admitted to membership in the United Nations, being "provisionally referred to for all purposes within the United Nations as 'the former Yugoslav Republic of Macedonia' pending settlement of the difference that has arisen over the name of the State".

The Court notes that the Parties agree that the Applicant intended to refer to itself within NATO, once admitted, by its constitutional name, not by the provisional designation set forth in resolution 817. Thus, it considers whether the second clause of Article 11, paragraph 1, permits the Respondent to object in that circumstance. The interpretation of that clause in accordance with Articles 31 and 32 of the Vienna Convention on the Law of Treaties leads the Court to conclude that the Respondent does not have the right to object to the Applicant's admission to an organization based on the prospect that the Applicant is to refer to itself in such organization with its constitutional name. It finds, in effect, that the Applicant's intention to refer to itself in an international organization by its constitutional name did not mean that it was "to be referred to" in such organization "differently than in" paragraph 2 of resolution 817.

Finally, the Court considers the Respondent's position that, even assuming that the Court were to conclude that the Respondent had objected to the Applicant's admission to NATO, in contravention of Article 11, paragraph 1, such objection would not breach the Interim Accord, because of the effect of Article 22. Article 22 of the Interim Accord provides:

> "This Interim Accord is not directed against any other State or entity and it does not infringe on the rights and duties resulting from bilateral or multilateral agreements already in force that the Parties have concluded with other States or international organizations."

The Court observes that the Respondent's initial interpretation of Article 22, that its "rights" under a prior agreement (in addition to its "duties") take precedence over its obligation not to object to admission by the Applicant to an organization within the terms of Article 11, paragraph 1, would vitiate that obligation, because the Respondent normally can be expected to have a "right" under prior agreements with third States to express a view on membership decisions. The Court, considering that the Parties did not intend Article 22 to render meaningless the first clause of Article 11, paragraph 1, is therefore unable to accept that interpretation advanced by the Respondent. The Court then notes that the Respondent's narrower interpretation of Article 22, which it advanced during the oral proceedings, i.e., that "duties" under a prior treaty would take precedence over obligations in the Interim Accord, would oblige it to determine whether the Respondent has established that the North Atlantic Treaty imposed a duty on it to object to the Applicant's admission to NATO. However, according to the Court, the Respondent offers no persuasive argument that any provision of the North Atlantic Treaty required it to object to the Applicant's membership. The Court concludes that the Respondent's attempt to rely on Article 22 is unsuccessful. Accordingly, it need not decide which of the two Parties' interpretations is the correct one.

In light of the above, the Court concludes that the Respondent failed to comply with its obligation under Article 11, paragraph 1, of the Interim Accord by objecting to the Applicant's admission to NATO at the Bucharest Summit. It considers the prospect that the Applicant would refer to itself in NATO using its constitutional name did not render that objection lawful under the exception contained in the second clause of Article 11, paragraph 1. It adds that, in the circumstances of the present case, Article 22 of the Interim Accord does not provide a basis for the Respondent to make an objection that is inconsistent with Article 11, paragraph 1.

IV. Additional justifications invoked by the Respondent (paras. 114-165)

The Court observes that, as an alternative to its main argument that it complied with its obligations under the Interim Accord, the Respondent contends that the wrongfulness of any objection to the admission of the Applicant to NATO is precluded by the doctrine of *exceptio non adimpleti contractus*. The Respondent also suggests that any failure to comply with its obligations under the Interim Accord could be justified both as a response to a material breach of a treaty and as a countermeasure under the law of State responsibility.

The Court observes that while the Respondent presents separate arguments relating to the *exceptio*, partial suspension under Article 60 of the 1969 Vienna Convention, and countermeasures, it advances certain minimum conditions that are common to all three arguments, namely that the Applicant breached several provisions of the Interim Accord and that the Respondent's objection to the Applicant's admission to NATO was made in response to those breaches.

A. Alleged breach by the Applicant of the second clause of Article 11, paragraph 1 (paras. 124-126)

The Court notes that on its face, the text of the second clause of Article 11, paragraph 1, does not impose an obligation upon the Applicant not to be referred to in an international organization or institution by any reference other than the provisional designation (as "the former Yugoslav Republic of Macedonia"). It further notes that, just as other provisions of the Interim Accord impose obligations only on the Applicant, Article 11, paragraph 1, imposes an obligation only on the Respondent. The second clause contains an important exception to this obligation, but that does not transform it into an obligation upon the Applicant. Accordingly, the Court finds no breach by the Applicant of this provision.

B. Alleged breach by the Applicant of Article 5, paragraph 1 (paras. 127-138)

At the outset, the Court notes that although Article 5, paragraph 1, contains no express requirement that the Parties negotiate in good faith, such obligation is implicit under this provision. It observes that the failure of the Parties to reach agreement, 16 years after the conclusion of the Interim Accord, does not in itself establish that either Party has breached its obligation to negotiate in good faith. It therefore considers whether the Parties conducted themselves in such a way that negotiations may be meaningful. It notes that during the course of the negotiations pursuant to Article 5, paragraph 1, the Applicant had resisted suggestions that it depart from its constitutional name and that the Respondent had opposed the use of "Macedonia" in the name of the Applicant. It further notes that the political leaders of both Parties at times made public statements that suggested an inflexible position as to the name difference, including in the months prior to the Bucharest Summit. Moreover, it observes that there is also evidence that the United Nations mediator presented the Parties with a range of proposals over the years and, in particular, expressed the view that, in the time period prior to the Bucharest Summit, the Parties were negotiating in earnest. Taken as a whole, the Court considers that the evidence from this period indicates that the Applicant showed a degree of openness to proposals that differed from either the sole use of its constitutional name or the "dual formula", while the Respondent, for its part, apparently changed its initial position and in September 2007 declared that it would agree to the word "Macedonia" being included in the Applicant's name as part of a compound formulation. The Court notes in particular that, in March 2008, the United Nations mediator proposed that the Applicant adopt the name "Republic of Macedonia (Skopje)" for all purposes. According to the record before the Court, the Applicant expressed a willingness to put this name to a referendum. The record also indicates that it was the Respondent who rejected this proposed name. Thus, the Court concludes that the Respondent has not met its burden of demonstrating that the Applicant breached its obligation to negotiate in good faith.

C. *Alleged breach by the Applicant of Article 6, paragraph 2* (paras. 139-142)

Article 6, paragraph 2, provides:

> "The Party of the Second Part hereby solemnly declares that nothing in its Constitution, and in particular in Article 49 as amended, can or should be interpreted as constituting or will ever constitute the basis for the Party of the Second Part to interfere in the internal affairs of another State in order to protect the status and rights of any persons in other States who are not citizens of the Party to the Second Part."

The Court considers that the Respondent has presented no convincing evidence to suggest that the Applicant has interpreted its Constitution as providing a right to interfere in the Respondent's internal affairs on behalf of persons not citizens of the Applicant. The Court therefore does not find that the Applicant breached Article 6, paragraph 2, prior to the Bucharest Summit.

D. *Alleged breach by the Applicant of Article 7, paragraph 1* (paras. 143-147)

Article 7, paragraph 1, provides:

> "Each Party shall promptly take effective measures to prohibit hostile activities or propaganda by State-controlled agencies and to

> discourage acts by private entities likely to incite violence, hatred or hostility against each other."

The Court recalls that, according to the Respondent, the Applicant breached this provision based on its failure to take effective measures to prohibit hostile activities by State-controlled agencies, citing, for example, allegations relating to the content of school textbooks, and its failure to discourage acts by private entities likely to incite violence, hatred or hostility against the Respondent, citing, in particular, an incident on 29 March 2008 (in the days prior to the Bucharest Summit) in which several outdoor billboards in Skopje depicted an altered image of the Respondent's flag. The Court observes that the Respondent also alleges a consistent failure by the Applicant to protect the premises and personnel of the Respondent's Liaison Office in Skopje.

The Court considers that the evidence cannot sustain a finding that the Applicant committed a breach of Article 7, paragraph 1, prior to the Bucharest Summit. It finds that the textbook content in question does not provide a basis to conclude that the Applicant has failed to prohibit "hostile activities or propaganda". Furthermore, the Respondent has not demonstrated convincingly that the Applicant failed "to discourage" acts by private entities likely to incite violence, hatred or hostility towards the Respondent. After recalling the obligation to protect the premises of the diplomatic mission and to protect against any disturbance of the peace or impairment of its dignity contained in Article 22 of the Vienna Convention on Diplomatic Relations, the Court finds that the Applicant introduced evidence demonstrating its efforts to provide adequate protection to the Respondent's diplomatic staff and premises.

E. Alleged breach by the Applicant of Article 7, paragraph 2
(paras. 148-153)

Article 7, paragraph 2, provides: "Upon entry into force of this Interim Accord, the Party of the Second Part shall cease to use in any way the symbol in all its forms displayed on its national flag prior to such entry into force."

The Court finds that the record does support the conclusion that there was at least one instance in which the Applicant's army used the symbol prohibited by Article 7, paragraph 2, of the Interim Accord.

F. Alleged breach by the Applicant of Article 7, paragraph 3
(paras. 154-160)

Article 7, paragraph 3, provides:

> "If either Party believes one or more symbols constituting part of its historic or cultural patrimony is being used by the other Party, it shall bring such alleged use to the attention of the other Party, and the other Party shall take appropriate corrective action or indicate why it does not consider it necessary to do so."

The Court notes that, in contrast to Article 7, paragraph 2, the text of Article 7, paragraph 3, does not expressly prohibit the Applicant from using the symbols that it describes. Rather, it establishes a procedure for situations in which one Party believes the other Party to be using its historical or cultural symbols. Therefore, according to the Court, the question to consider is whether the Respondent brought its concern "to the attention" of the Applicant before the Bucharest Summit when the latter renamed the airport of the capital. To that end, it notes that although it does not appear that the Respondent did so, the Applicant was aware of the Respondent's concern, and the Applicant's Foreign Minister explained the rationale behind the renaming of the airport in a January 2007 interview to a Greek newspaper. The Court concludes that the Respondent has not discharged its burden to demonstrate a breach of Article 7, paragraph 3, by the Applicant.

*

In light of this analysis of the Respondent's allegations that the Applicant breached several of its obligations under the Interim Accord, the Court concludes that the Respondent has established only one such breach. Namely, the Respondent has demonstrated that the Applicant used the symbol prohibited by Article 7, paragraph 2, of the Interim Accord in 2004. After the Respondent raised the matter with the Applicant in 2004, the use of the symbol was discontinued during that same year.

G. Conclusions concerning the Respondent's additional justifications (paras. 161-166)

1. Conclusion concerning the exceptio non adimpleti contractus (para. 161)

Having reviewed the Respondent's allegations of breaches by the Applicant, the Court returns to the Respondent's contention that the *exceptio*, as it is defined by the Respondent, precludes the Court from finding that the Respondent breached its obligation under Article 11, paragraph 1, of the Interim Accord. The Court recalls that in all but one instance (the use of the symbol prohibited by Article 7, paragraph 2), the Respondent failed to establish any breach of the Interim Accord by the Applicant. In addition, the Respondent has failed to show a connection between the Applicant's use of the symbol in 2004 and the Respondent's objection in 2008 — that is, evidence that when the Respondent raised its objection to the Applicant's admission to NATO, it did so in response to the apparent violation of Article 7, paragraph 2, or, more broadly, on the basis of any belief that the *exceptio* precluded the wrongfulness of its objection. The Respondent has thus failed to establish that the conditions which it has itself asserted would be necessary for the application of the *exceptio* have been satisfied in this case. It is, therefore, unnecessary for the Court to determine whether that doctrine forms part of contemporary international law.

2. *Conclusion concerning a response to material breach* (paras. 162-163)

The Court recalls that the Respondent also suggested that its objection to the Applicant's admission to NATO could have been regarded as a response, within Article 60 of the 1969 Vienna Convention, to material breaches of the Interim Accord allegedly committed by the Applicant. Article 60, paragraph 3 *(b)*, of the 1969 Vienna Convention provides that a material breach consists in "the violation of a provision essential to the accomplishment of the object or purpose of the treaty". The Court further recalls its conclusion that the only breach which has been established is the display of a symbol in breach of Article 7, paragraph 2, of the Interim Accord, a situation which ended in 2004. The Court considers that this incident cannot be regarded as a material breach within the meaning of Article 60 of the 1969 Vienna Convention. Moreover, the Court considers that the Respondent has failed to establish that the action which it took in 2008 in connection with the Applicant's application to NATO was a response to the breach of Article 7, paragraph 2, approximately four years earlier. Accordingly, the Court does not accept that the Respondent's action was capable of falling within Article 60 of the 1969 Vienna Convention.

3. *Conclusion concerning countermeasures* (paras. 164-165)

The Court recalls that the Respondent also argues that its objection to the Applicant's admission to NATO could be justified as a proportionate countermeasure in response to breaches of the Interim Accord by the Applicant. As the Court has already made clear, the only breach which has been established by the Respondent is the Applicant's use in 2004 of the symbol prohibited by Article 7, paragraph 2, of the Interim Accord. Having reached that conclusion and in the light of its analysis concerning the reasons given by the Respondent for its objection to the Applicant's admission to NATO, the Court is not persuaded that the Respondent's objection to the Applicant's admission was taken for the purpose of achieving the cessation of the Applicant's use of the symbol prohibited by Article 7, paragraph 2. As the Court noted, the use of the symbol that supports the finding of a breach of Article 7, paragraph 2, by the Applicant had ceased as of 2004. Thus, the Court rejects the Respondent's claim that its objection could be justified as a countermeasure precluding the wrongfulness of the Respondent's objection to the Applicant's admission to NATO. Accordingly, there is no reason for the Court to consider any of the additional arguments advanced by the Parties with respect to the law governing countermeasures.

For the foregoing reasons, the Court finds that the additional justifications submitted by the Respondent fail.

*

Lastly, the Court emphasizes that the 1995 Interim Accord places the Parties under a duty to negotiate in good faith under the auspices of the Secretary-General of the United Nations pursuant to the pertinent Security Council resolutions with a view to reaching agreement on the difference described in those resolutions.

*

V. *Remedies* (paras. 167-169)

The Court recalls that, in its final submissions pertaining to the merits of the present case, the Applicant seeks two remedies which it regarded as constituting appropriate redress for claimed violations of the Interim Accord by the Respondent. First, the Applicant seeks relief in the form of a declaration of the Court that the Respondent has acted illegally, and secondly, it requests relief in the form of an order of the Court that the Respondent henceforth refrain from any action that violates its obligations under Article 11, paragraph 1, of the Interim Accord.

At the end of its consideration, the Court has found a violation by the Respondent of its obligation under Article 11, paragraph 1, of the Interim Accord. As to possible remedies for such a violation, the Court finds that a declaration that the Respondent violated its obligation not to object to the Applicant's admission to or membership in NATO is warranted. Moreover, the Court does not consider it necessary to order the Respondent, as the Applicant requests, to refrain from any future conduct that violates its obligation under Article 11, paragraph 1, of the Interim Accord. As the Court previously explained, "[a]s a general rule, there is no reason to suppose that a State whose act or conduct has been declared wrongful by the Court will repeat that act or conduct in the future, since its good faith must be presumed" (*Dispute regarding Navigational and Related Rights (Costa Rica* v. *Nicaragua), Judgment, I.C.J. Reports 2009*, p. 267, para. 150).

The Court accordingly determines that its finding that the Respondent has violated its obligation to the Applicant under Article 11, paragraph 1, of the Interim Accord, constitutes appropriate satisfaction.

VI. *Operative clause* (para. 170)

"For these reasons,

THE COURT,

(1) By fourteen votes to two,

Finds that it has jurisdiction to entertain the Application filed by the former Yugoslav Republic of Macedonia on 17 November 2008 and that this Application is admissible;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Donoghue; *Judge* ad hoc Vukas;

AGAINST: *Judge* Xue; *Judge* ad hoc Roucounas;

(2) By fifteen votes to one,

Finds that the Hellenic Republic, by objecting to the admission of the former Yugoslav Republic of Macedonia to NATO, has breached its obligation under Article 11, paragraph 1, of the Interim Accord of 13 September 1995;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue; *Judge* ad hoc Vukas;

AGAINST: *Judge* ad hoc Roucounas;

(3) By fifteen votes to one,

Rejects all other submissions made by the former Yugoslav Republic of Macedonia.

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue; *Judge* ad hoc Roucounas;

AGAINST: *Judge* ad hoc Vukas."

*

Judge Simma appended a separate opinion to the Judgment of the Court; Judge Bennouna appended a declaration to the Judgment of the Court; Judge Xue appended a dissenting opinion to the Judgment of the Court; Judge *ad hoc* Roucounas appended a dissenting opinion to the Judgment of the Court; Judge *ad hoc* Vukas appended a declaration to the Judgment of the Court.

The present summary of the Judgment appears in the document entitled Summary 2011/6. This summary and the full text of the Judgment can be found on the Court's website, under the case title *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia* v. *Greece)*, in the Section entitled "Cases".

9. *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening)*

On 23 December 2008, the Federal Republic of Germany instituted proceedings against the Italian Republic, alleging that "[t]hrough its judicial practice . . . Italy has infringed and continues to infringe its obligations towards Germany under international law".

In its Application, Germany contended that:

> "[i]n recent years, Italian judicial bodies have repeatedly disregarded the jurisdictional immunity of Germany as a sovereign State[, that the] critical stage of that development was reached by the judgment of the Corte di Cassazione of 11 March 2004 in the *Ferrini* case, where [that court] declared that Italy held jurisdiction with regard to a claim . . . brought by a person who during World War II had been deported to Germany to perform forced labour in the armaments industry [, and that, after] this judgment had been rendered, numerous other proceedings were instituted against Germany before Italian courts by persons who had also suffered injury as a consequence of the armed conflict."

The Applicant stated that enforcement measures had already been taken against German assets in Italy: a "judicial mortgage" on Villa Vigoni, the German-Italian centre of cultural exchange, had been recorded in the land register. In addition to the claims brought against it by Italian nationals, Germany also cited "attempts by Greek nationals to enforce in Italy a judgment obtained in Greece on account of a . . . massacre committed by German military units during their withdrawal in 1944".

Germany concluded its Application by requesting the Court to adjudge and declare that Italy:

> "(1) by allowing civil claims based on violations of international humanitarian law by the German Reich during World War II from September 1943 to May 1945 to be brought against the Federal Republic of Germany, committed violations of obligations under international law in that it has failed to respect the jurisdictional immunity which the Federal Republic of Germany enjoys under international law;
>
> (2) by taking measures of constraint against 'Villa Vigoni', German State property used for government non-commercial purposes, also committed violations of Germany's jurisdictional immunity;
>
> (3) by declaring Greek judgments based on occurrences similar to those defined above in request No. 1 enforceable in Italy, committed a further breach of Germany's jurisdictional immunity."

Accordingly, the Federal Republic of Germany requested the Court to adjudge and declare that:

> "(4) the Italian Republic's international responsibility is engaged;
>
> (5) the Italian Republic must, by means of its own choosing, take any and all steps to ensure that all the decisions of its courts and other judicial authorities infringing Germany's sovereign immunity become unenforceable;
>
> (6) the Italian Republic must take any and all steps to ensure that

> in the future Italian courts do not entertain legal actions against Germany founded on the occurrences described in request No. 1 above."

As the basis for the jurisdiction of the Court, Germany invoked, in its Application, Article 1 of the European Convention for the Peaceful Settlement of Disputes of 29 April 1957, ratified by Italy on 29 January 1960 and by Germany on 18 April 1961 (see *I.C.J. Annual Report 2008-2009, et seq.*).

By an Order of 29 April 2009, the Court fixed 23 June 2009 as the time-limit for the filing of a Memorial by Germany and 23 December 2009 as the time-limit for the filing of a Counter-Memorial by Italy. Those pleadings were filed within the time-limits thus prescribed.

In Chapter VII of the Counter-Memorial filed by Italy, the Respondent, referring to Article 80 of the Rules of Court, made a counter-claim "with respect to the question of the reparation owed to Italian victims of grave violations of international humanitarian law committed by forces of the German Reich" (*I.C.J. Annual Report 2008-2009, et seq.*).

By an Order of 6 July 2010, the Court, by thirteen votes to one, found "that the counter-claim presented by Italy . . . is inadmissible as such and does not form part of the current proceedings" (see *I.C.J. Annual Report 2009-2010, et seq.*). The Court then unanimously authorized the submission of a Reply by Germany and a Rejoinder by Italy and fixed 14 October 2010 and 14 January 2011 as the respective time-limits for the filing of those pleadings. The Reply of Germany and the Rejoinder of Italy were filed within the time-limits thus fixed.

On 12 January 2011, Greece filed an Application for permission to intervene in the case (Article 62 of the Statute). In that Application, Greece stated, *inter alia*, that it did not seek "to become a party to the case". By an Order of 4 July 2011, the Court authorized Greece to intervene in the case as a non-party, "in so far as this intervention [was] limited to the decisions of Greek courts [in the *Distomo* case]" (see *I.C.J. Annual Report 2010-2011*).

Public hearings were held from Monday 12 to Friday 16 September 2011, at the end of which, the Parties presented the following final submissions to the Court:

For the Federal Republic of Germany:

> "Germany respectfully requests the Court to adjudge and declare that the Italian Republic:
>
> (1) by allowing civil claims based on violations of international humanitarian law by the German Reich during World War II between September 1943 and May 1945 to be brought against the Federal Republic of Germany, committed violations of obligations under international law in that it has failed to respect the jurisdictional immunity which the Federal Republic of Germany enjoys under international law;

(2) by taking measures of constraint against 'Villa Vigoni', German State property used for government non-commercial purposes, also committed violations of Germany's jurisdictional immunity;

(3) by declaring Greek judgments based on occurrences similar to those defined above in request No. 1 enforceable in Italy, committed a further breach of Germany's jurisdictional immunity.

Accordingly, the Federal Republic of Germany respectfully requests the Court to adjudge and declare that:

(4) the Italian Republic's international responsibility is engaged;

(5) the Italian Republic must, by means of its own choosing, take any and all steps to ensure that all the decisions of its courts and other judicial authorities infringing Germany's sovereign immunity become unenforceable; and

(6) the Italian Republic must take any and all steps to ensure that in the future Italian courts do not entertain legal actions against Germany founded on the occurrences described in request No. 1 above."

For the Italian Republic:

> "[F]or the reasons given in [its] written and oral pleadings, [Italy requests] that the Court adjudge and hold the claims of the Applicant to be unfounded. This request is subject to the qualification that . . . Italy has no objection to any decision by the Court obliging Italy to ensure that the mortgage on Villa Vigoni inscribed at the land registry is cancelled."

Greece presented its oral observations to the Court on Wednesday 14 September 2011.

At a public sitting held on 3 February 2012, the Court delivered its Judgment (*I.C.J. Reports 2012 (I)*, p. 99), a summary of which is given below.

Reasoning of the Court

I. Historical and factual background of the case (paras. 20-36)

The Court began by reciting the history of the proceedings and the submissions of the Parties as set out here above.

II. The subject-matter of the dispute and the jurisdiction of the Court (paras. 37-51)

Germany requests the Court, in substance, to find that Italy has failed to respect the jurisdictional immunity which Germany enjoys under international law by allowing civil claims to be brought against it in the Italian courts, seeking reparation for injuries caused by violations of international humanitarian law committed by the German Reich during the Second World War; that Italy has also violated Germany's immunity by taking measures of constraint against Villa Vigoni, German State property situated in Italian territory; and that it has further breached Germany's jurisdictional immunity by declaring enforceable in Italy decisions of Greek civil courts rendered against Germany on the basis of acts similar to those which gave rise to the claims brought before Italian courts.

Italy, for its part, requests the Court to adjudge Germany's claims to be unfounded and therefore to reject them, apart from the submission regarding the measures of constraint taken against Villa Vigoni, on which point the Respondent indicates to the Court that it would have no objection to the latter ordering it to bring the said measures to an end. In its Counter-Memorial, Italy submitted a counter-claim "with respect to the question of the reparation owed to Italian victims of grave violations of international humanitarian law committed by forces of the German Reich"; this claim was dismissed by the Court's Order of 6 July 2010, on the grounds that it did not fall within the jurisdiction of the Court and was consequently inadmissible under Article 80, paragraph 1, of the Rules of Court.

The Court recalls that Germany's Application was filed on the basis of Article 1 of the European Convention for the Peaceful Settlement of Disputes, under the terms of which:

> "The High Contracting Parties shall submit to the judgment of the International Court of Justice all international legal disputes which may arise between them including, in particular, those concerning:
>
> (*a*) the interpretation of a treaty;
> (*b*) any question of international law;
> (*c*) the existence of any fact which, if established, would constitute a breach of an international obligation;
> (*d*) the nature or extent of the reparation to be made for the breach of an international obligation."

The Court notes that Article 27, subparagraph (*a*), of the same Convention limits the scope of that instrument *ratione temporis* by stating that it shall not apply to "disputes relating to facts or situations prior to the entry into force of this Convention as between the parties to the dispute". It states in this connection that the Convention entered into force as between Germany and Italy on 18 April 1961.

Having observed that the claims submitted by Germany related to "international legal disputes" within the meaning of Article 1 as cited above, between two States which were both parties to the European Convention on the date when the Application was filed, the Court finds that the clause in the above-mentioned Article 27 imposing a limitation *ratione temporis* is not applicable to Germany's claims. In fact, the "facts or situations" which have given rise to the dispute before the Court are constituted by Italian judicial decisions that denied Germany the jurisdictional immunity which it claimed, and by measures of constraint applied to property belonging to Germany. The Court observes, however, that those decisions and measures were adopted between 2004 and 2011, thus well after the European Convention entered into force as between the Parties. The Court therefore has jurisdiction to deal with the dispute.

The Court notes that, while the Parties have not disagreed on the analysis set out above, they have on the other hand debated the extent of the Court's jurisdiction in the context of some of the arguments put forward by Italy and relating to the alleged non-performance by Germany of its obligation to make reparation to the Italian and Greek victims of the crimes committed by the German Reich in 1943-1945. It states in that connection that, although it is no longer called upon to rule on the question of whether Germany has a duty of reparation towards the Italian victims of the crimes committed by the German Reich, having decided, by Order of 6 July 2010, that Italy's counter-claim was inadmissible, it must nevertheless determine whether the failure of a State to perform completely a duty of reparation which it allegedly bears is capable of having an effect, in law, on the existence and scope of that State's jurisdictional immunity before foreign courts. The Court observes that, if this answer is in the affirmative, the second question will be whether, in the specific circumstances of the case, taking account in particular of Germany's conduct on the issue of reparation, the Italian courts had sufficient grounds for setting aside Germany's immunity.

III. Alleged violations of Germany's jurisdictional immunity in the proceedings brought by the Italian claimants (paras. 52-108)

The Court first considers the issues raised by Germany's first submission, namely whether, by exercising jurisdiction over Germany with regard to the claims brought before them by the various Italian claimants, the Italian courts acted in breach of Italy's obligation to accord jurisdictional immunity to Germany.

1. The issues before the Court (paras. 52-61)

The Court begins by observing that the proceedings in the Italian courts have their origins in acts perpetrated by German armed forces and other organs of the German Reich. It distinguishes three categories of cases: the first concerns the large-scale killing of civilians in occupied territory as part of a policy of reprisals, exemplified by the massacres committed on 29 June 1944 in Civitella in Val di Chiana, Cornia and San Pancrazio by members of the "Hermann Göring" division of the German armed forces, involving the killing of 203 civilians taken as hostages after resistance fighters had killed four German soldiers a few days earlier; the second involves members of the civilian population who, like Mr. Luigi Ferrini, were deported from Italy to what was in substance slave labour in Germany; the third concerns members of the Italian armed forces who were denied the status of prisoner of war, together with the protections which that status entailed, to which they were entitled, and who were similarly used as forced labourers.

While the Court finds that there can be no doubt that this conduct was a serious violation of the international law of armed conflict applicable in 1943-1945, it considers that it is not called upon to decide whether these acts were illegal, a point which is not contested, but whether, in proceedings regarding claims for compensation arising out of those acts, the Italian courts were obliged to accord Germany immunity. In that context, the Court notes that there is a considerable measure of agreement between the Parties regarding the fact that immunity is governed by international law and is not a mere matter of comity. It states that, as between the Parties, the entitlement to immunity can be derived only from customary international law. Therefore, the Court must determine, in accordance with Article 38 (1) *(b)* of its Statute, whether "international custom, as evidence of a general practice accepted as law" conferring immunity on States, exists and, if so, what is the scope and extent of that immunity.

The Court notes that, although there has been much debate regarding the origins of State immunity and the identification of the principles underlying that immunity in the past, the International Law Commission (hereinafter the "ILC") concluded in 1980 that the rule of State immunity had been "adopted as a general rule of customary international law solidly rooted in the current practice of States". In the opinion of the Court, that conclusion was based upon an extensive survey of State practice and is confirmed by the record of national legislation, judicial decisions and the comments of States on what became the United Nations Convention on the Jurisdictional Immunities of States and Their Property (hereinafter the "United Nations Convention"). It believes that practice to show that, whether in claiming immunity for themselves or according it to others, States generally proceed on the basis that there is a right to immunity under international law, together with a corresponding obligation on the part of other States to respect and give effect to that immunity.

The Court observes that the Parties are thus in broad agreement regarding the validity and importance of State immunity as a part of customary international law. It notes that their views differ, however, as to whether, as Germany contends, the law to be applied is that which determined the scope and extent of State immunity in 1943-1945, i.e., at the time that the events giving rise to the proceedings in the Italian courts took place, or, as Italy maintains, that which applied at the time the proceedings themselves occurred. The Court states that, in accordance with the principle stated in Article 13 of the ILC Articles on Responsibility of States for Internationally Wrongful Acts, the compatibility of an act with international law can be determined only by reference to the law in force at the time when the act occurred. Since the relevant Italian acts, namely the denial of immunity and exercise of jurisdiction by the Italian courts, did not occur until the proceedings in the Italian courts took place, the Court concludes that it must examine and apply the law on State immunity as it existed at the time of the Italian proceedings, rather than that which existed in 1943-1945. In support of that conclusion, the Court adds that the law of immunity is essentially procedural in nature; it regulates the exercise of jurisdiction in respect of particular conduct and is thus entirely distinct from the substantive law which determines whether that conduct is lawful or unlawful.

The Court notes that the Parties also differ as to the scope and extent of the rule of State immunity. Although both agree that States are generally entitled to immunity in respect of *acta jure imperii*, they disagree as to whether immunity is applicable to acts committed by the armed forces of a State (and other organs of that State acting in co-operation with the armed forces) in the course of conducting an armed conflict. Germany maintains that immunity is applicable and that there is no relevant limitation on the immunity to which a State is entitled in respect of *acta jure imperii*. Italy, for its part, maintains that Germany is not entitled to immunity in respect of the cases before the Italian courts for two reasons: first, that immunity as to *acta jure imperii* does not extend to torts or delicts occasioning death, personal injury or damage to property committed on the territory of the forum State, and, secondly, that, irrespective of where the relevant acts took place, Germany was not entitled to immunity because those acts involved the most serious violations of rules of international law of a peremptory character for which no alternative means of redress was available. The Court addresses each of Italy's arguments in turn.

2. *Italy's first argument: the territorial tort principle* (paras. 62-79)

The Court considers that it is not called upon in the present proceedings to resolve the question whether there is in customary international law a "tort exception" to State immunity applicable to *acta jure imperii* in general. The issue before the Court is confined to acts committed on the territory of the forum State by the armed forces of a foreign State, and other organs of State working in co-operation with those armed forces, in the course of conducting an armed conflict.

The Court begins by examining whether Article 11 of the European Convention or Article 12 of the United Nations Convention affords any support to Italy's contention that States are no longer entitled to immunity in respect of the type of acts specified above. It explains that, as neither Convention is in force between the Parties to the present case, they are relevant only in so far as their provisions and the process of their adoption and implementation shed light on the content of customary international law.

Article 11 of the European Convention sets out the territorial tort principle in broad terms:

> "A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State in proceedings which relate to redress for injury to the person or damage to tangible property, if the facts which occasioned the injury or damage occurred in the territory of the State of the forum, and if the author of the injury or damage was present in that territory at the time when those facts occurred."

The Court notes that that provision must, however, be read in the light of Article 31, which provides:

> "Nothing in this Convention shall affect any immunities or privileges enjoyed by a Contracting State in respect of anything done or omitted to be done by, or in relation to, its armed forces when on the territory of another Contracting State."

The Court finds that Article 31 excludes from the scope of the Convention all proceedings relating to acts of foreign armed forces, irrespective of whether those forces are present in the territory of the forum with the consent of the forum State and whether their acts take place in peacetime or in conditions of armed conflict. It considers that Article 31 takes effect as a "saving clause", with the result that the immunity of a State for the acts of its armed forces falls entirely outside the Convention and has to be determined by reference to customary international law. In the Court's view, however, the consequence is that the inclusion of the "territorial tort principle" in Article 11 of the Convention cannot be treated as support for the argument that a State is not entitled to immunity for torts committed by its armed forces.

The Court notes that, unlike the European Convention, the United Nations Convention contains no express provision excluding the acts of armed forces from its scope. However, the ILC's commentary on the text of Article 12[1] states that that provision does not apply to "situations involving armed conflicts". The Court further observes that no State questioned this interpretation and that two of the States which have so far ratified the Convention made declarations in identical terms stating their understanding that the Convention does not apply to military activities, including the activities of armed forces during an armed conflict and activities undertaken by military forces of a State in the exercise of their official duties. The Court concludes that the inclusion in the Convention of Article 12 cannot be taken as affording any support to the contention that customary international law denies State immunity in tort proceedings relating to acts occasioning death, personal injury or damage to property committed in the territory of the forum State by the armed forces and associated organs of another State in the context of an armed conflict.

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[1] Article 12 of the United Nations Convention provides:

> "Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to pecuniary compensation for death or injury to the person, or damage to or loss of tangible property, caused by an act or omission which is alleged to be attributable to the State, if the act or omission occurred in whole or in part in the territory of that other State and if the author of the act or omission was present in that territory at the time of the act or omission."

Turning to State practice in the form of national legislation, the Court notes that nine of the ten States referred to by the Parties which have legislated specifically for the subject of State immunity have adopted provisions to the effect that a State is not entitled to immunity in respect of torts occasioning death, personal injury or damage to property occurring on the territory of the forum State. The Court observes that two of these statutes contain provisions that exclude proceedings relating to the acts of foreign armed forces from their application. It further observes that, while none of the other seven States referred to by the Parties makes provision in its legislation for the acts of armed forces, the courts have not been called upon to apply that legislation in a case involving the armed forces of a foreign State, and associated organs of State, acting in the context of an armed conflict.

The Court next turns to State practice in the form of the judgments of national courts regarding State immunity in relation to the acts of armed forces. In the Court's opinion, that practice supports the proposition that State immunity for *acta jure imperii* continues to extend to civil proceedings for acts occasioning death, personal injury or damage to property committed by the armed forces and other organs of a State in the conduct of armed conflict, even if the relevant acts take place on the territory of the forum State. The Court notes that that practice is accompanied by *opinio juris*, as demonstrated by the positions taken by States and the jurisprudence of a number of national courts which have made clear that they considered that customary international law required immunity. It finds that the almost complete absence of contrary jurisprudence is also significant, as is the absence of any statements by States in connection with the work of the ILC regarding State immunity and the adoption of the United Nations Convention or, so far as the Court has been able to discover, in any other context asserting that customary international law does not require immunity in such cases.

In light of the foregoing, the Court concludes that customary international law continues to require that a State be accorded immunity in proceedings for torts allegedly committed on the territory of another State by its armed forces and other organs of State in the course of conducting an armed conflict. It adds that that conclusion is confirmed by the judgments of the European Court of Human Rights. Accordingly, the Court finds that the decision of the Italian courts to deny immunity to Germany cannot be justified on the basis of the territorial tort principle.

3. Italy's second argument: the subject-matter and circumstances of the claims in the Italian courts (paras. 80-106)

The Court notes that Italy's second argument, which, unlike its first argument, applies to all of the claims brought before the Italian courts, is that the denial of immunity was justified on account of the particular nature of the acts forming the subject-matter of the claims before the Italian courts and the circumstances in which those claims were made. There are three strands to this argument. Firstly, Italy contends that the acts which gave rise to the claims constituted serious violations of the principles of international law applicable to the conduct of armed conflict, amounting to war crimes and crimes against humanity. Secondly, Italy maintains that the rules of international law thus contravened were peremptory norms (*jus cogens*). Thirdly, Italy argues that the claimants having been denied all other forms of redress, the exercise of jurisdiction by the Italian courts was necessary as a matter of last resort. The Court considers each of these strands in turn, while recognizing that, in the oral proceedings, Italy contended that its courts had been entitled to deny immunity to Germany because of the combined effect of these three strands.

A. The gravity of the violations (paras. 81-91)

The Court notes that the first strand is based upon the proposition that international law does not accord immunity to a State, or at least restricts its right to immunity, when that State has committed serious violations of the law of armed conflict. It recalls that, in the present case, the Court has already made clear that the actions of the German armed forces and other organs of the German Reich giving rise to the proceedings before the Italian courts were serious violations of the law of armed conflict which amounted to crimes under international law. In the Court's view, the question is, therefore, whether that fact operates to deprive Germany of its entitlement to immunity.

The Court begins by inquiring whether customary international law has developed to the point where a State is not entitled to immunity in the case of serious violations of human rights law or the law of armed conflict. After examining State and international practice, the Court concludes that, under customary international law as it presently stands, a State is not deprived of immunity by reason of the fact that it is accused of serious violations of international human rights law or the international law of armed conflict. In reaching that conclusion, the Court emphasizes that it is addressing only the immunity of the State itself from the jurisdiction of the courts of other States; the question of whether, and if so to what extent, immunity might apply in criminal proceedings against an official of the State is not at issue in the present case.

B. The relationship between jus cogens *and the rule of State immunity* (paras. 92-97)

The Court next turns to the second strand in Italy's argument, which emphasizes the *jus cogens* status of the rules which were violated by Germany during the period 1943-1945. It notes that this strand of the argument rests on the premise that there is a conflict between *jus cogens* rules forming part of the law of armed conflict and according immunity to Germany. According to Italy, since *jus cogens* rules always prevail over any inconsistent rule of international law, and since the rule which accords one State immunity before the courts of another does not have the status of *jus cogens*, the rule of immunity must give way.

The Court is of the opinion that there is no conflict between a rule, or rules, of *jus cogens*, and the rule of customary law which requires one State to accord immunity to another. Assuming for this purpose that the rules of the law of armed conflict which prohibit the murder of civilians in occupied territory, the deportation of civilian inhabitants to slave labour and the deportation of prisoners of war to slave labour are rules of *jus cogens*, the Court takes the view that there is no conflict between those rules and the rules on State immunity. The two sets of rules address different matters. The rules of State immunity are procedural in character and are confined to determining whether or not the courts of one State may exercise jurisdiction in respect of another State. They do not bear upon the question whether or not the conduct in respect of which the proceedings are brought was lawful or unlawful. That is why the application of the contemporary law of State immunity to proceedings concerning events which occurred in 1943-1945 does not infringe the principle that law should not be applied retrospectively to determine matters of legality and responsibility.

The Court observes that, in the present case, the violation of the rules prohibiting murder, deportation and slave labour took place in the period 1943-1945. The illegality of these acts is openly acknowledged by all concerned. The application of rules of State immunity to determine whether or not the Italian courts have jurisdiction to hear claims arising out of those violations cannot involve any conflict with the rules which were violated. The Court adds that the argument about the effect of *jus cogens* displacing the law of State immunity has been rejected by the national courts. It states that the judgments of the Italian courts which are the subject of the present proceedings are the only decisions of national courts to have accepted the reasoning on which Italy's argument is based. It observes, moreover, that none of the national legislation on State immunity has limited immunity in cases where violations of *jus cogens* are alleged.

The Court concludes that, even assuming that the proceedings in the Italian courts involved violations of *jus cogens* rules, the applicability of the customary international law on State immunity was not affected.

C. The "last resort" argument (paras. 98-104)

The Court notes that the third and final strand of the Italian argument is that the Italian courts were justified in denying Germany the immunity to which it would otherwise have been entitled, because all other attempts to secure compensation for the various groups of victims involved in the Italian proceedings had failed.

The Court considers that it cannot accept Italy's contention that the alleged shortcomings in Germany's provisions for reparation to Italian victims entitled the Italian courts to deprive Germany of jurisdictional immunity. It can find no basis in the State practice from which customary international law is derived that international law makes the entitlement of a State to immunity dependent upon the existence of effective alternative means of securing redress. Neither in the national legislation on the subject, nor in the jurisprudence of the national courts which have been faced with objections based on immunity is there any evidence that entitlement to immunity is subjected to such a precondition. States also did not include any such condition in either the European Convention or the United Nations Convention. Moreover, the Court cannot fail to observe that the application of any such condition, if it indeed existed, would be exceptionally difficult in practice, particularly in a context such as that of the present case, when claims have been the subject of extensive intergovernmental discussion.

Accordingly, the Court rejects Italy's argument that Germany could be refused immunity on this basis.

D. The combined effect of the circumstances relied upon by Italy (paras. 105-106)

The Court observes that, in the course of the oral proceedings, counsel for Italy maintained that the three strands of Italy's second argument had to be viewed together; it was because of the cumulative effect of the gravity of the violations, the status of the rules violated and the absence of alternative means of redress that the Italian courts had been justified in refusing to accord immunity to Germany.

The Court states that it has already determined that none of the three strands of the second Italian argument would, of itself, justify the action of the Italian courts. It is not persuaded that they would have that effect if taken together. According to the Court, in so far as the argument based on the combined effect of the circumstances is to be understood as meaning that the national court should balance the different factors, assessing the respective weight, on the one hand, of the various circumstances that might justify the exercise of its jurisdiction, and, on the other hand, of the interests attaching to the protection of immunity, such an approach would disregard the very nature of State immunity.

4. Conclusions (paras. 107-108)

The Court holds that the action of the Italian courts in denying Germany the immunity to which the Court has held it was entitled under customary international law constitutes a breach of the obligations owed by the Italian State to Germany.

IV. The measures of constraint taken against property belonging to Germany located on Italian territory (paras. 109-120)

The Court recalls that, on 7 June 2007, certain Greek claimants, in reliance on a decision of the Florence Court of Appeal of 13 June 2006 declaring enforceable in Italy the judgment rendered by the Court of First Instance of Livadia, in Greece, which had ordered Germany to pay them compensation, entered in the Land Registry of the Province of Como a legal charge against Villa Vigoni, a property of the German State located near Lake Como. It further recalls that Germany argued that such a measure of constraint violates the immunity from enforcement to which it is entitled under international law and that Italy, for its part, has not sought to justify that measure. It notes that the charge in question was suspended, in order to take account of the pending proceedings before the Court in the present case. The Court further notes that a dispute still exists between the Parties, inasmuch as Italy has not formally admitted that the legal charge on Villa Vigoni constituted a measure contrary to its international obligations; nor has it put an end to the effects of that measure.

The Court observes that the immunity from enforcement enjoyed by States in regard to their property situated on foreign territory goes further than the jurisdictional immunity enjoyed by those same States before foreign courts. Even if a judgment has been lawfully rendered against a foreign State, in circumstances such that the latter could not claim immunity from jurisdiction, it does not follow *ipso facto* that the State against which judgment has been given can be the subject of measures of constraint on the territory of the forum State or on that of a third State, with a view to enforcing the judgment in question. Similarly, any waiver by a State of its jurisdictional immunity before a foreign court does not in itself mean that that State has waived its immunity from enforcement as regards property belonging to it situated in foreign territory. The Court considers that, in the present case, the distinction between the rules of customary international law governing immunity from enforcement and those governing jurisdictional immunity (understood *stricto sensu* as the right of a State not to be the subject of judicial proceedings in the courts of another State) means that the Court may rule on the issue of whether the charge on Villa Vigoni constitutes a measure of constraint in violation of Germany's immunity from enforcement, without needing to determine whether the decisions of the Greek courts awarding pecuniary damages against Germany, for purposes of whose enforcement that measure was taken, were themselves in breach of that State's jurisdictional immunity.

Relying on Article 19 of the United Nations Convention, inasmuch as it reflects customary law on the matter, the Court finds that there is at least one condition that has to be satisfied before any measure of constraint may be taken against property belonging to a foreign State that the property in question must be in use for an activity not pursuing government non-commercial purposes, or that the State which owns the property has expressly consented to the taking of a measure of constraint, or that that State has allocated the property in question for the satisfaction of a judicial claim. However, the Court concludes that it is clear in the present case that the property which was the subject of the measure of constraint at issue is being used for governmental purposes that are entirely non-commercial, and hence for purposes falling within Germany's sovereign functions. Villa Vigoni is in fact the seat of a cultural centre intended to promote cultural exchanges between Germany and Italy. Nor, the Court adds, has Germany in any way expressly consented to the taking of a measure such as the legal charge in question, or allocated Villa Vigoni for the satisfaction of the judicial claims against it.

In these circumstances, the Court finds that the registration of a legal charge on Villa Vigoni constitutes a violation by Italy of its obligation to respect the immunity owed to Germany.

V. The decisions of the Italian courts declaring enforceable in Italy decisions of Greek courts upholding civil claims against Germany (paras. 121-133)

The Court notes that, in its third submission, Germany complains that its jurisdictional immunity was also violated by decisions of the Italian courts declaring enforceable in Italy judgments rendered by Greek courts against Germany in proceedings arising out of the Distomo massacre, committed by the armed forces of the German Reich in 1944.

According to the Court, the relevant question is whether the Italian courts did themselves respect Germany's immunity from jurisdiction in allowing the application for *exequatur*, and not whether the Greek court having rendered the judgment of which *exequatur* is sought had respected Germany's jurisdictional immunity. The Court observes that when a court is seised, as in the present case, of an application for *exequatur* of a foreign judgment against a third State, it is itself being called upon to exercise its jurisdiction in respect of the third State in question. Although the purpose of *exequatur* proceedings is not to decide on the merits of a dispute, but simply to render an existing judgment enforceable on the territory of a State other than that of the court which ruled on the merits, the fact nonetheless remains that, in granting or refusing *exequatur*, the court exercises a jurisdictional power which results in the foreign judgment being given effects corresponding to those of a judgment rendered on the merits in the requested State. The proceedings brought before that court must therefore be regarded as being conducted against the third State which was the subject of the foreign judgment. According to the Court, it follows that the court seised of an application for *exequatur* of a foreign judgment rendered against a third State has to ask itself whether the respondent State enjoys immunity from jurisdiction — having regard to the nature of the case in which that judgment was given — before the courts of the State in which *exequatur* proceedings have been instituted. In other words, it has to ask itself whether, in the event that it had itself been seised of the merits of a dispute identical to that which was the subject of the foreign judgment, it would have been obliged under international law to accord immunity to the respondent State. The Court concludes that, in the light of this reasoning, it follows that the Italian courts which declared enforceable in Italy the decisions of Greek courts rendered against Germany have violated the latter's immunity. The Court considers that, in order to reach such a decision, it is unnecessary to rule on the question whether the Greek courts did themselves violate Germany's immunity, a question which is not before the Court, and on which, moreover, it cannot rule.

The Court concludes, therefore, that the decisions of the Italian courts declaring enforceable in Italy judgments rendered by Greek courts against Germany in proceedings arising out of the Distomo massacre constitute a violation by Italy of its obligation to respect the jurisdictional immunity of Germany.

VI. Germany's final submissions and the remedies sought
(paras. 134-138)

The Court upholds Germany's first three requests, which ask it to declare, in turn, that Italy has violated the jurisdictional immunity which Germany enjoys under international law by allowing civil claims based on violations of international humanitarian law by the German Reich between 1943 and 1945; that Italy has also committed violations of the immunity owed to Germany by taking enforcement measures against Villa Vigoni; and, lastly, that Italy has violated Germany's immunity by declaring enforceable in Italy Greek judgments based on occurrences similar to those referred to above.

In respect of Germany's fourth submission, the Court does not consider it necessary to include an express declaration in the operative clause that Italy's international responsibility is engaged.

With regard to Germany's fifth submission, in which it asks the Court to order Italy to take, by means of its own choosing, any and all steps to ensure that all the decisions of its courts and other judicial authorities infringing Germany's sovereign immunity become unenforceable, the Court begins by recalling that the State responsible for an internationally wrongful act is under an obligation to cease that act, if it is continuing, and, even if the act in question has ended, the State responsible is under an obligation to re-establish, by way of reparation, the situation which existed before the wrongful act was committed, provided that re-establishment is not materially impossible and that it does not involve a burden for that State out of all proportion to the benefit deriving from restitution instead of compensation. The Court finds that the decisions and measures infringing Germany's jurisdictional immunities which are still in force must cease to have effect, and the effects which have already been produced by those decisions and measures must be reversed, in such a way that the situation which existed before the wrongful acts were committed is re-established. The Court adds that it has not been alleged or demonstrated that restitution would be materially impossible in this case, or that it would involve a burden for Italy out of all proportion to the benefit deriving from it. On the other hand, it observes that Italy has the right to choose the means it considers best suited to achieve the required result. Thus the Respondent is under an obligation to achieve this result by enacting appropriate legislation or by resorting to other methods of its choosing having the same effect.

The Court, however, does not uphold Germany's sixth submission, in which it asks the Court to order Italy to take any and all steps to ensure that in the future Italian courts do not entertain legal actions against Germany founded on the occurrences described in its first submission (namely violations of international humanitarian law committed by the German Reich between 1943 and 1945). As it has stated in previous cases, the Court recalls that, as a general rule, there is no reason to suppose that a State whose act or conduct has been declared wrongful by the Court will repeat that act or conduct in the future, since its good faith must be presumed. Accordingly, while the Court may order the State responsible for an internationally wrongful act to offer assurances of non-repetition to the injured State, or to take specific measures to ensure that the wrongful act is not repeated, it may only do so when there are special circumstances which justify this, which the Court must assess on a case-by-case basis. In the present case, however, the Court has no reason to believe that such circumstances exist.

VII. Operative clause (para. 139)

"For these reasons,

THE COURT,

(1) By twelve votes to three,

Finds that the Italian Republic has violated its obligation to respect the immunity which the Federal Republic of Germany enjoys under international law by allowing civil claims to be brought against it based on violations of international humanitarian law committed by the German Reich between 1943 and 1945;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Greenwood, Xue, Donoghue;

AGAINST: *Judges* Cançado Trindade, Yusuf; *Judge* ad hoc Gaja;

(2) By fourteen votes to one,

Finds that the Italian Republic has violated its obligation to respect the immunity which the Federal Republic of Germany enjoys under international law by taking measures of constraint against Villa Vigoni;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Yusuf, Greenwood, Xue, Donoghue; *Judge* ad hoc Gaja;

AGAINST: *Judge* Cançado Trindade;

(3) By fourteen votes to one,

Finds that the Italian Republic has violated its obligation to respect the immunity which the Federal Republic of Germany enjoys under international law by declaring enforceable in Italy decisions of Greek courts based on violations of international humanitarian law committed in Greece by the German Reich;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Yusuf, Greenwood, Xue, Donoghue; *Judge* ad hoc Gaja;

AGAINST: *Judge* Cançado Trindade;

(4) By fourteen votes to one,

Finds that the Italian Republic must, by enacting appropriate legislation, or by resorting to other methods of its choosing, ensure that the decisions of its courts and those of other judicial authorities infringing the immunity which the Federal Republic of Germany enjoys under international law cease to have effect;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Yusuf, Greenwood, Xue, Donoghue; *Judge* ad hoc Gaja;

AGAINST: *Judge* Cançado Trindade;

(5) Unanimously,

Rejects all other submissions made by the Federal Republic of Germany."

*

Judges Koroma, Keith and Bennouna appended separate opinions to the Judgment of the Court; Judges Cançado Trindade and Yusuf appended dissenting opinions to the Judgment of the Court; Judge *ad hoc* Gaja appended a dissenting opinion to the Judgment of the Court.

The present summary of the Judgment appears in the document entitled Summary 2012/2. This summary and the full text of the Judgment can be found on the Court's website, under the case title *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening)*, in the Section entitled "Cases".

10. Questions relating to the Obligation to Prosecute or Extradite (Belgium v. *Senegal)*

On 19 February 2009, the Kingdom of Belgium instituted proceedings against Senegal, on the grounds that a dispute exists "between the Kingdom of Belgium and the Republic of Senegal regarding Senegal's compliance with its obligation to prosecute" the former President of Chad, Hissène Habré, "or to extradite him to Belgium for the purposes of criminal proceedings". Belgium also submitted a request for the indication of provisional measures, in order to protect its rights pending the Court's Judgment on the merits.

In its Application, Belgium maintained that Senegal, where Mr. Habré has been living in exile since 1990, had taken no action on its repeated requests to see the former President of Chad prosecuted in Senegal, failing his extradition to Belgium, for acts characterized as including crimes of torture and crimes against humanity.

To found the Court's jurisdiction, Belgium, in its Application, invoked the unilateral declarations recognizing the compulsory jurisdiction of the Court made by the Parties pursuant to Article 36, paragraph 2, of the Statute of the Court, on 17 June 1958 (Belgium) and 2 December 1985 (Senegal), respectively.

Moreover, the Applicant indicated that "[t]he two States [are] parties to the United Nations Convention against Torture of 10 December 1984". The Convention was ratified by Senegal on 21 August 1986, without reservation, and has been binding on the latter since 26 June 1987, when it entered into force. It was ratified by Belgium on 25 June 1999, without reservation, and has been binding on the latter since 25 July 1999. Article 30 of that Convention provides that any dispute between two States parties concerning the interpretation or application of the Convention which it has not been possible to settle through negotiation or arbitration may be submitted to the International Court of Justice by one of those States. Belgium contended that negotiations between the two States "have continued unsuccessfully since 2005" and that it reached the conclusion on 20 June 2006 that they had failed. It stated, moreover, that it had suggested recourse to arbitration to Senegal on 20 June 2006 but claimed that the latter "failed to respond to that request . . . whereas Belgium has persistently confirmed in Notes Verbales that a dispute on this subject continues to exist".

At the end of its Application, Belgium requested the Court to adjudge and declare that:

"— the Court has jurisdiction to entertain the dispute between the Kingdom of Belgium and the Republic of Senegal regarding Senegal's compliance with its obligation to prosecute Mr. H. Habré or to extradite him to Belgium for the purposes of criminal proceedings;
— Belgium's claim is admissible;

- the Republic of Senegal is obliged to bring criminal proceedings against Mr. H. Habré for acts including crimes of torture and crimes against humanity which are alleged against him as perpetrator, co-perpetrator or accomplice;
- failing the prosecution of Mr. H. Habré, the Republic of Senegal is obliged to extradite him to the Kingdom of Belgium so that he can answer for these crimes before the Belgian courts."

Belgium's Application was accompanied by a request for the indication of provisional measures. Belgium explained therein that while "Mr. H. Habré is [at present] under house arrest in Dakar . . . it transpires from an interview which the President of Senegal, A. Wade, gave to Radio France International that Senegal could lift his house arrest if it fails to find the budget which it regards as necessary in order to hold the trial of Mr. H. Habré". The Applicant stated that, "in such an event, it would be easy for Mr. H. Habré to leave Senegal and avoid any prosecution", which "would cause irreparable prejudice to the rights conferred on Belgium by international law . . . and also violate the obligations which Senegal must fulfil".

Public hearings were held from 6 to 8 April 2009 to hear the oral observations of the Parties on the request for the indication of provisional measures submitted by Belgium.

At the close of those hearings, Belgium asked the Court to indicate the following provisional measures: "the Republic of Senegal is requested to take all the steps within its power to keep Mr. Hissène Habré under the control and surveillance of the Senegalese authorities so that the rules of international law with which Belgium requests compliance may be correctly applied". For its part, Senegal asked the Court "to reject the provisional measures requested by Belgium".

In its Order made on 28 May 2009, the Court found, by thirteen votes to one, that "the circumstances, as they now present themselves to the Court, are not such as to require the exercise of its power . . . to indicate provisional measures".

By an Order of 9 July 2009, the Court fixed 9 July 2010 as the time-limit for the filing of a Memorial by Belgium and 11 July 2011 as the time-limit for the filing of a Counter-Memorial by Senegal. The Memorial of Belgium was filed within the time-limit thus fixed.

By Order of 11 July 2011, the President of the Court extended the time-limit for the filing of the Counter-Memorial of Senegal from 11 July 2011 to 29 August 2011. The Counter-Memorial was filed within the time-limit thus extended.

Public hearings on the merits of the case were held from Monday 12 to Wednesday 21 March 2012. At the conclusion of their oral arguments, the Parties presented the following final submissions to the Court.

Belgium requested the Court to adjudge and declare that:

"1. *(a)* Senegal breached its international obligations by failing to incorporate in due time in its domestic law the provisions necessary to enable the Senegalese judicial authorities to exercise the universal jurisdiction provided for in Article 5, paragraph 2, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(*b*) Senegal has breached and continues to breach its international obligations under Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and under other rules of international law by failing to bring criminal proceedings against Hissene Habré for acts characterized in particular as crimes of torture, war crimes, crimes against humanity and the crime of genocide alleged against him as perpetrator, co-perpetrator or accomplice, or, otherwise, to extradite him to Belgium for the purposes of such criminal proceedings;

(*c*) Senegal may not invoke financial or other difficulties to justify the breaches of its international obligations.

2. Senegal is required to cease these internationally wrongful acts

(*a*) by submitting without delay the Hissène Habré case to its competent authorities for prosecution; or

(*b*) failing that, by extraditing Hissène Habré to Belgium without further ado."

Senegal requested the Court to adjudge and declare that:

"1. Principally, it cannot adjudicate on the merits of the Application filed by the Kingdom of Belgium because it lacks jurisdiction as a result of the absence of a dispute between Belgium and Senegal, and the inadmissibility of that Application;

2. In the alternative, should it find that it has jurisdiction and that Belgium's Application is admissible, that Senegal has not breached any of the provisions of the 1984 Convention against Torture, in particular those prescribing the obligation to 'try or extradite' (Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention), or, more generally, any other rule of conventional law, general international law or customary international law in this area;

3. In taking the various measures that have been described, Senegal is fulfilling its commitments as a State Party to the 1984 Convention against Torture;

4. In taking the appropriate measures and steps to prepare for the trial of Mr. H. Habré, Senegal is complying with the declaration by which it made a commitment before the Court;

5 It consequently rejects all the requests set forth in the Application of the Kingdom of Belgium."

At a public sitting held on 20 July 2012, the Court delivered its Judgment (*I.C.J. Reports 2012 (II)*, p. 422), a summary of which is given below.

Reasoning of the Court

I. Historical and factual background (paras. 15-41)

The Court began by reciting the history of the proceedings and the submissions of the Parties as set out here above.

II. Jurisdiction of the Court (paras. 42-63)

Having recalled the two bases of jurisdiction relied on by Belgium — namely Article 30, paragraph 1, of the Convention against Torture and the declarations made by the Parties under Article 36, paragraph 2, of the Statute of the Court —, the Court notes that Senegal contests the existence of its jurisdiction on either basis, maintaining that the conditions set forth in the relevant instruments have not been met and, in the first place, that there is no dispute between the Parties.

A. The existence of a dispute (paras. 44-55)

The Court recalls that, in the claims included in its Application, Belgium requested the Court to adjudge and declare that:

> "the Republic of Senegal is obliged to bring criminal proceedings against Mr. H. Habré for acts including crimes of torture and crimes against humanity which are alleged against him as perpetrator, co-perpetrator or accomplice; failing the prosecution of Mr. H. Habré, the Republic of Senegal is obliged to extradite him to the Kingdom of Belgium so that he can answer for these crimes before the Belgian courts".

In its final submissions, Belgium asked the Court to find that Senegal breached its obligations under Article 5, paragraph 2, of the Convention against Torture, and that, by failing to take action in relation to Mr. Habré's alleged crimes, Senegal has breached and continues to breach its obligations under Article 6, paragraph 2, and Article 7, paragraph 1, of that instrument and under certain other rules of international law. The Court notes that, for its part, Senegal submits that there is no dispute between the Parties with regard to the interpretation or application of the Convention against Torture or any other relevant rule of international law and that, as a consequence, the Court lacks jurisdiction in the present case. The Court observes, therefore, that the Parties have thus presented radically divergent views about the existence of a dispute between them and, if any dispute exists, its subject-matter. Given that the existence of a dispute is a condition of its jurisdiction under both bases of jurisdiction invoked by Belgium, the Court begins by examining this issue.

Relying on its earlier jurisprudence, the Court recalls in this connection that, in order to establish whether a dispute exists, "[i]t must be shown that the claim of one party is positively opposed by the other" (*South West Africa (Ethiopia* v. *South Africa; Liberia* v. *South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 328), it being understood that "[w]hether there exists an international dispute is a matter for objective determination" (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74) and that "[t]he Court's determination must turn on an examination of the facts. The matter is one of substance, not of form." (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 84, para. 30.) The Court also notes that the "dispute must in principle exist at the time the Application is submitted to the Court" (*ibid.*).

The Court begins by examining Belgium's first request that the Court should declare that Senegal breached Article 5, paragraph 2, of the Convention against Torture, which requires a State party to the Convention to "take such measures as may be necessary to establish its jurisdiction" over acts of torture when the alleged offender is "present in any territory under its jurisdiction" and that State does not extradite him to one of the States referred to in paragraph 1 of the same article. The Court notes that, while Belgium contends that the fact that Senegal did not comply with its obligation under Article 5, paragraph 2, "in a timely manner" produced negative consequences concerning the implementation of some other obligations under the Convention, it acknowledges, however, that Senegal has finally complied with its obligation through, on the one hand, its 2007 legislative reforms (which extend the jurisdiction of Senegalese courts over certain offences, including torture, war crimes, crimes against humanity and the crime of genocide allegedly committed by a foreign national outside Senegal's territory, irrespective of the nationality of the victim) and, on the other, its 2008 constitutional amendment (which now precludes the principle of non-retroactivity in criminal matters from preventing the prosecution of an individual for acts which were crimes under international law at the time when they were committed).

The Court considers that any dispute that may have existed between the Parties with regard to the interpretation or application of Article 5, paragraph 2, of the Convention had ended by the time the Application was filed. It concludes, therefore, that it lacks jurisdiction to decide on Belgium's claim relating to the obligation deriving from that treaty provision. It states, however, that this does not prevent the Court from considering the consequences that Senegal's conduct in relation to the measures required by this provision may have had on its compliance with certain other obligations under the Convention, should the Court have jurisdiction in that regard.

The Court next considers Belgium's contention that Senegal breached two other treaty obligations, which respectively require a State party to the Convention, when a person who has allegedly committed an act of torture is found on its territory, to hold "a preliminary inquiry into the facts" (Art. 6, para. 2) and, "if it does not extradite him", to "submit the case to its competent authorities for the purpose of prosecution" (Art. 7, para. 1). On this point, the Court notes that Senegal maintains that there is no dispute with regard to the interpretation or application of these provisions, not only because there is no dispute between the Parties concerning the existence and scope of the obligations contained therein but also because it has met those obligations. On the basis of the Parties' diplomatic exchanges, the Court considers that Belgium's claims founded on the interpretation and application of Articles 6, paragraph 2, and 7, paragraph 1, of the Convention were positively opposed by Senegal; it concludes, therefore, that a dispute existed at the time of the filing of the Application and notes that this dispute still exists.

The Court observes that the Application of Belgium also includes a request that the Court declare that Senegal breached an obligation under customary international law to "bring criminal proceedings against Mr. H. Habré" for crimes against humanity allegedly committed by him; Belgium later extended this request to cover war crimes and genocide, both in its Memorial and at the hearings. On this point, Senegal also contends that no dispute has arisen between the Parties.

The Court notes that, while it is the case that the Belgian international arrest warrant in respect of Mr. Habré — transmitted to Senegal with a request for extradition on 22 September 2005 — referred to violations of international humanitarian law, torture, genocide, crimes against humanity, war crimes, murder and other crimes, neither document stated or implied that Senegal had an obligation under international law to exercise its jurisdiction over those crimes if it did not extradite Mr. Habré. In terms of the Court's jurisdiction, what matters is whether, on the date when the Application was filed, a dispute existed between the Parties regarding the obligation for Senegal, under customary international law, to take measures in respect of the above-mentioned crimes attributed to Mr. Habré. In the light of the diplomatic exchanges between the Parties, the Court considers that such a dispute did not exist on that date. The only obligations referred to in the diplomatic correspondence between the Parties are those under the Convention against Torture. The Court considers that, under those circumstances, there was no reason for Senegal to address at all in its relations with Belgium the issue of the prosecution of alleged crimes of Mr. Habré under customary international law. The Court states that the facts which constituted those alleged crimes may have been closely connected to the alleged acts of torture. However, the issue whether there exists an obligation for a State to prosecute crimes under customary international law that were allegedly committed by a foreign national abroad is clearly distinct from any question of compliance with that State's obligations under the Convention against Torture and raises quite different legal problems.

The Court concludes that, at the time of the filing of the Application, the dispute between the Parties did not relate to breaches of obligations under customary international law and that it thus has no jurisdiction to decide on Belgium's claims related thereto. It is, therefore, only with regard to the dispute concerning the interpretation and application of Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention against Torture that the Court will have to determine whether there exists a legal basis of jurisdiction.

B. Other conditions for jurisdiction (paras. 56-63)

The Court next turns to the other conditions which should be met for it to have jurisdiction under Article 30, paragraph 1, of the Convention against Torture, under the terms of which:

> "Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court."

These conditions are that the dispute cannot be settled through negotiation and that, after a request for arbitration has been made by one of the parties, they have been unable to agree on the organization of the arbitration within six months from that request.

With regard to the first of these conditions, the Court asserts that it must begin by ascertaining whether there was, "at the very least[ ] a genuine attempt by one of the disputing parties to engage in discussions with the other disputing party, with a view to resolving the dispute" (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 132, para. 157). According to the Court's jurisprudence, "the precondition of negotiation is met only when there has been a failure of negotiations, or when negotiations have become futile or deadlocked" (*ibid.*, p. 133, para. 159). The requirement that the dispute "cannot be settled through negotiation" could not be understood as referring to a theoretical impossibility of reaching a settlement. It means that, as the Court noted with regard to a similarly worded provision, "no reasonable probability exists that further negotiations would lead to a settlement" (*South West Africa (Ethiopia* v. *South Africa; Liberia* v. *South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 345).

The Court notes that, while Belgium expressly stated that the numerous exchanges of correspondence and various meetings which were held between the Parties between 11 January 2006 and 21 June 2006 fell within the framework of the negotiating process under Article 30, paragraph 1, of the Convention against Torture. Senegal did not object to the characterization by Belgium of the diplomatic exchanges as negotiations. In view of Senegal's position that, even though it did not agree on extradition and had difficulties in proceeding towards prosecution, it was nevertheless complying with its obligations under the Convention, negotiations did not make any progress towards resolving the dispute. Having noted that this divergence of the Parties' views persisted until the oral phase, the Court concludes that the condition set forth in Article 30, paragraph 1, of the Convention that the dispute cannot be settled by negotiation has been met.

With regard to the submission to arbitration of the dispute on the interpretation of Article 7 of the Convention against Torture, a Note Verbale of the Belgian Ministry of Foreign Affairs of 4 May 2006 observed that "[a]n unresolved dispute regarding this interpretation would lead to recourse to the arbitration procedure provided for in Article 30 of the Convention against Torture". In a Note Verbale of 9 May 2006 the Ambassador of Senegal in Brussels responded that:

> "As to the possibility of Belgium having recourse to the arbitration procedure provided for in Article 30 of the Convention against Torture, the Embassy can only take note of this, restating the commitment of Senegal to the excellent relationship between the two countries in terms of co-operation and the combating of impunity."

Having subsequently made a direct request to resort to arbitration in a Note Verbale of 20 June 2006, Belgium remarked, in that Note, that "the attempted negotiation with Senegal, which started in November 2005, ha[d] not succeeded" and that Belgium, "in accordance with Article 30, paragraph 1, of the Torture Convention, consequently ask[ed] Senegal to submit the dispute to arbitration under conditions to be agreed mutually".

The Court observes that Belgium reiterated this request for arbitration in its Note Verbale of 8 May 2007, to which Senegal failed to respond. Although Belgium did not make any detailed proposal for determining the issues to be submitted to arbitration and the organization of the arbitration proceedings, in the Court's view, this does not mean that the condition that "the Parties are unable to agree on the organization of the arbitration" has not been fulfilled, since a State may defer proposals concerning these aspects to the time when a positive response is given in principle to its request to settle the dispute by arbitration. The Court recalls that it has said, with regard to a similar treaty provision, that "the lack of agreement between the parties as to the organization of an arbitration cannot be presumed. The existence of such disagreement can follow only from a proposal for arbitration by the applicant, to which the respondent has made no answer or which it has expressed its intention not to accept." (*Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda*

Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006, p. 41, para. 92.) The Court concludes that the present case is one in which the inability of the Parties to agree on the organization of the arbitration results from the absence of any response on the part of the State to which the request for arbitration was addressed.

In respect of the second condition laid down in Article 30, paragraph 1, of the Convention against Torture, namely that at least six months should pass after the request for arbitration before the case is submitted to the Court, the Court considers that, in the present case, this requirement has been complied with, since the Application was filed over two years after the request for arbitration had been made.

Having determined that the conditions set out in Article 30, paragraph 1, of the Convention against Torture have been met, the Court concludes that it has jurisdiction to entertain the dispute between the Parties concerning the interpretation and application of Article 6, paragraph 2, and Article 7, paragraph 1, of that instrument. Having reached this conclusion, the Court does not find it necessary to consider whether its jurisdiction also exists with regard to the same dispute on the basis of the declarations made by the Parties under Article 36, paragraph 2, of its Statute.

III. Admissibility of Belgium's claims (paras. 64-70)

The Court notes the divergence of views between the Parties concerning the standing of Belgium, which based its claims not only on its status as a party to the Convention, but also on the existence of a special interest that would distinguish Belgium from the other parties to the Convention and give it a specific entitlement in the case of Mr. Habré.

Relying on the object and purpose of the Convention, which is "to make more effective the struggle against torture . . . throughout the world", the Court finds that the States parties to the Convention have a common interest to ensure, in view of their shared values, that acts of torture are prevented and that, if they occur, their authors do not enjoy impunity, regardless of the nationality of the offender or the victims, or of the place where the alleged offences occurred. The Court considers that all the other States parties have a common interest in compliance with these obligations by the State in whose territory the alleged offender is present, that common interest implying that the obligations in question are owed by any State party to all the other States parties to the Convention. It follows that all the States parties "have a legal interest" in the protection of the rights involved (*Barcelona Traction, Light and Power Company, Limited (Belgium* v. *Spain), Judgment, I.C.J. Reports 1970*, p. 32, para. 33) and that these obligations may be defined as "obligations *erga omnes partes*" in the sense that each State party has an interest in compliance with them in any given case.

The Court concludes that Belgium, as a State party to the Convention against Torture, has standing to invoke the responsibility of Senegal for the alleged breaches of its obligations under Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention in the present proceedings. Therefore, the claims of Belgium based on these treaty provisions are admissible. In view of this admissibility, the Court considers that there is no need for it to pronounce on whether Belgium also has a special interest with respect to Senegal's compliance with the relevant provisions of the Convention in the case of Mr. Habré.

IV. The alleged violations of the Convention against Torture
(paras. 71-117)

The Court recalls that, while in its Application instituting proceedings, Belgium requested it to adjudge and declare that Senegal is obliged to bring criminal proceedings against Mr. Habré and, failing that, to extradite him to Belgium, in its final submissions, it requested the Court to adjudge and declare that Senegal breached and continues to breach its obligations under Article 6, paragraph 2, and Article 7, paragraph 1, of that Convention by failing to bring criminal proceedings against Mr. Habré, unless it extradites him. The Applicant also pointed out during the proceedings that the obligations deriving from those two treaty provisions and Article 5 are closely linked with each other in the context of achieving the object and purpose of the Convention, which is to make more effective the struggle against torture. Hence, incorporating the appropriate legislation into domestic law (Art. 5, para. 2) would allow the State in whose territory a suspect is present immediately to make a preliminary inquiry into the facts (Art. 6, para. 2), a necessary step in order to enable that State, with knowledge of the facts, to submit the case to its competent authorities for the purpose of prosecution (Art. 7, para. 1).

The Court notes that Senegal contests Belgium's allegations and considers that it has not breached any provision of the Convention against Torture. The Respondent contends that the Convention breaks down the *aut dedere aut judicare* obligation into a series of actions which a State should take and that the measures it has taken hitherto show that it has complied with its international commitments, which are, to a very large extent, left to the discretion of the State concerned. Having asserted that it has resolved not to extradite Mr. Habré, but to organize his trial and to try him, Senegal maintains that it adopted constitutional and legislative reforms in 2007-2008, in accordance with Article 5 of the Convention, to enable it to hold a fair and equitable trial of the alleged perpetrator of the crimes in question reasonably quickly. It further states that the measures it has taken to restrict the liberty of Mr. Habré, pursuant to Article 6 of the Convention, as well as other measures taken in preparation for Mr. Habré's trial, contemplated under the aegis of the African Union, must be regarded as constituting the first steps towards fulfilling the obligation to prosecute laid down in Article 7 of the Convention.

The Court asserts that, although it has no jurisdiction over the alleged violation of Article 5, paragraph 2, of the Convention mentioned earlier, it should be noted that the performance by the State of its obligation to establish the universal jurisdiction of its courts over the crime of torture (Art. 5, para. 2) is a necessary condition for enabling a preliminary inquiry (Art. 6, para. 2), and for submitting the case to its competent authorities for the purpose of prosecution (Art. 7, para. 1). The purpose of all these obligations is to enable proceedings to be brought against the suspect, in the absence of his extradition, and to achieve the object and purpose of the Convention, which is to make more effective the struggle against torture by avoiding impunity for the perpetrators of such acts.

The Court observes that the obligation for the State to criminalize torture and to establish its jurisdiction over it, which finds its equivalent in the provisions of many international conventions for the combating of international crimes, has to be implemented by the State concerned as soon as it is bound by the Convention. This obligation has in particular a preventive and deterrent character, since by equipping themselves with the necessary legal tools to prosecute this type of offence, the States parties ensure that their legal systems will operate to that effect and commit themselves to co-ordinating their efforts to eliminate any risk of impunity. In this connection, the Court considers that, by not adopting the necessary legislation until 2007, Senegal delayed the submission of the case to its competent authorities for the purpose of prosecution, to the extent that, on 4 July 2000 and 20 March 2001 respectively, the Dakar Court of Appeal and the Senegalese Court of Cassation were led to conclude that the Senegalese courts lacked jurisdiction to entertain proceedings against Mr. Habré, who had been indicted for crimes against humanity, acts of torture and barbarity, in the absence of appropriate legislation allowing such proceedings within the domestic legal order. The Court concludes that the delay in the adoption of the required legislation necessarily affected Senegal's implementation of the obligations imposed on it by Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention. The Court, bearing in mind the link which exists between the different provisions of the Convention, then analyses the alleged breaches of Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention.

4. *The alleged breach of the obligation laid down in Article 6, paragraph 2, of the Convention* (paras. 79-88)

Having recalled that, under the terms of Article 6, paragraph 2, of the Convention, the State in whose territory a person alleged to have committed acts of torture is present "shall immediately make a preliminary inquiry into the facts", the Court notes that, while Belgium considers that the obligation deriving from this provision is a procedural one — in the sense that the said State should take effective measures to gather evidence, if necessary through mutual judicial assistance, by addressing letters rogatory to countries likely to be able to assist it. Senegal takes the view that it is simply an obligation of result, because the inquiry is aimed at establishing the facts, and does not necessarily lead to prosecution, since the prosecutor may, in the light of the results, consider that there are no grounds for such proceedings. In any event, Senegal claims to have fulfilled the said obligation.

In the opinion of the Court, the preliminary inquiry provided for in Article 6, paragraph 2, is intended, like any inquiry carried out by the competent authorities, to corroborate or not the suspicions regarding the person in question. That inquiry is conducted by those authorities which have the task of drawing up a case file and collecting facts and evidence; this may consist of documents or witness statements relating to the events at issue and to the suspect's possible involvement in the matter concerned. The Court considers that the co-operation of the Chadian authorities should have been sought in this instance, and that of any other State where complaints have been filed in relation to the case, so as to enable Senegal to fulfil its obligation to make a preliminary inquiry. The Court observes that Senegal has not included in the case file any material demonstrating that the latter has carried out such an inquiry in respect of Mr. Habré. It considers that it is not sufficient, as Senegal maintains, for a State party to the Convention to have adopted all the legislative measures required for its implementation; it must also exercise its jurisdiction over any act of torture which is at issue, starting by establishing the facts. The questioning at first appearance which the investigating judge at the *Tribunal régional hors classe* in Dakar conducted in order to establish Mr. Habré's identity and to inform him of the acts of which he was accused cannot be regarded as performance of the obligation laid down in Article 6, paragraph 2, as it did not involve any inquiry into the charges against Mr. Habré.

The Court notes that, while the choice of means for conducting the inquiry remains in the hands of the States parties, taking account of the case in question, Article 6, paragraph 2, of the Convention requires that steps must be taken as soon as the suspect is identified in the territory of the State, in order to conduct an investigation of that case. The establishment of the facts at issue, which is an essential stage in that process, has been imperative in the present case at least since the year 2000, when a complaint was filed in Senegal against Mr. Habré. Moreover, Senegal did not open an inquiry into the facts in 2008, when a further complaint against Mr. Habré was filed in Dakar after the legislative and constitutional amendments were made in 2007 and 2008.

Since Senegal itself stated in 2010 before the ECOWAS Court of Justice that no proceedings were pending or prosecution ongoing against Mr. Habré in Senegalese courts, the Court concludes that Senegal has breached its obligation under Article 6, paragraph 2, of the Convention by not immediately initiating a preliminary inquiry as soon as its competent authorities had reason to suspect Mr. Habré, who was in their territory, of being responsible for acts of torture. The Court considers that that point was reached, at the latest, when the first complaint was filed against Mr. Habré in 2000.

B. The alleged breach of the obligation laid down in Article 7, paragraph 1, of the Convention (paras. 89-117)

Having cited Article 7, paragraph 1, of the Convention, which provides:

> "[t]he State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in Article 4 is found shall in the cases contemplated in Article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution",

The Court observes that the obligation to submit the case to the competent authorities for the purpose of prosecution (hereinafter the "obligation to prosecute"), which derives from this provision, was formulated in such a way as to leave it to those authorities to decide whether or not to initiate proceedings, thus respecting the independence of States parties' judicial systems. The authorities thus remain responsible for deciding on whether to initiate a prosecution, in the light of the evidence before them and the relevant rules of criminal procedure. In the present case, the Court is of the view that Belgium's claim relating to the application of Article 7, paragraph 1, raises a certain number of questions regarding the nature and meaning of the obligation contained therein and its temporal scope, as well as its implementation in the present case.

1. The nature and meaning of the obligation laid down in Article 7, paragraph 1 (paras. 92-95)

The Court clarifies the nature and meaning of the obligation to prosecute by indicating that Article 7, paragraph 1, requires the State in whose territory the suspect is present to submit the case to its competent authorities for the purpose of prosecution, irrespective of the existence of a prior request for the extradition of the suspect. That State is thus obliged to make a preliminary inquiry (Art. 6, para. 2) immediately from the time that the suspect is present in its territory, it being understood that the obligation to submit the case to the competent authorities, under Article 7, paragraph 1, may or may not result in the institution of proceedings, in the light of the evidence before them, relating to the charges against the suspect. The Court states that if, however, the State in whose territory the suspect is present has received a request for extradition in any of the cases envisaged in the provisions of the Convention, it can relieve itself of its obligation to prosecute by acceding to that request. The choice between extradition or submission for prosecution, pursuant to the Convention, does not mean that the two alternatives are to be given the same weight because, while extradition is an option offered to the State by the Convention, prosecution, on the other hand, is an international obligation laid down by the Convention, the violation of which is a wrongful act engaging the responsibility of the State.

2. *The temporal scope of the obligation laid down in Article 7, paragraph 1* (paras. 96-105)

With respect to the question relating to the temporal application of Article 7, paragraph 1, of the Convention, according to the time when the offences are alleged to have been committed and the dates of entry into force of the Convention for Senegal (26 June 1987) and Belgium (25 June 1999), the Court, having found that there is no clear divergence between the Parties' views on the question, considers that the prohibition of torture is part of customary international law and it has become a peremptory norm *(jus cogens)*. That prohibition is grounded in a widespread international practice and on the *opinio juris* of States, taking account of the fact that it appears in numerous international instruments of universal application and has been introduced into the domestic law of almost all States, and that acts of torture are regularly denounced within national and international fora.

However, the Court states that, pursuant to the provisions of Article 28 of the Vienna Convention on the Law of Treaties, which reflects customary law on the matter of treaty interpretation, the obligation to prosecute the alleged perpetrators of acts of torture under the Convention applies only to facts having occurred after its entry into force for the State concerned. It thus notes that nothing in the Convention against Torture reveals an intention to require a State party to criminalize, under Article 4, acts of torture that took place prior to its entry into force for that State, or to establish its jurisdiction over such acts in accordance with Article 5. It follows that the obligation to prosecute does not apply to such acts. This was confirmed by the United Nations Committee against Torture in its decision of 23 November 1989 in the case of *O. R., M. M. and M. S.* v. *Argentina*, in which it stated that "'torture' for purposes of the Convention can only mean torture that occurs subsequent to the entry into force of the Convention".

The Court concludes that Senegal's obligation to prosecute pursuant to Article 7, paragraph 1, of the Convention does not apply to acts alleged to have been committed before the Convention entered into force for it on 26 June 1987. It notes however that, since the complaints against Mr. Habré include a number of serious offences allegedly committed after that date, Senegal is under an obligation to submit the allegations concerning those acts to its competent authorities for the purpose of prosecution. The Court further asserts that, although Senegal is not required under the Convention to institute proceedings concerning acts that were committed before 26 June 1987, nothing in that instrument prevents it from doing so.

With respect to the question concerning the effect of the date of entry into force of the Convention, for Belgium, on the scope of Senegal's obligation to prosecute, the Court observes a notable divergence between the Parties' views. While Belgium contends that Senegal was still bound by the obligation to prosecute Mr. Habré after Belgium had itself become party to the Convention, and that it was therefore entitled to invoke before the Court breaches of the Convention occurring after 25 July 1999, Senegal disputes Belgium's right to engage its responsibility for acts alleged to have occurred prior to that date, given that the obligation provided for in Article 7, paragraph 1, belongs, according to the Respondent, to "the category of divisible *erga omnes* obligations" and that only the injured State could call for its breach to be sanctioned. Senegal accordingly concludes that Belgium was not entitled to rely on the status of injured State in respect of acts prior to 25 July 1999 and could not seek retroactive application of the Convention.

The Court considers that Belgium has been entitled, with effect from 25 July 1999, the date when it became party to the Convention, to request the Court to rule on Senegal's compliance with its obligation under Article 7, paragraph 1 (the same conclusion also being valid in respect of Article 6, paragraph 2). In the present case, the Court notes that Belgium invokes Senegal's responsibility for the latter's conduct starting in the year 2000, when a complaint was filed against Mr. Habré in Senegal.

3. *Implementation of the obligation laid down in Article 7, paragraph 1* (paras. 106-117)

The Court recalls the respective positions of the Parties regarding the implementation of the obligation to prosecute. Belgium, while recognizing that the time frame for implementation of the said obligation depends on the circumstances of each case, and in particular on the evidence gathered, considers, in the first instance, that the State in whose territory the suspect is present cannot indefinitely delay performing the obligation incumbent upon it to submit the matter to its competent authorities for the purpose of prosecution, since procrastination on that State's part could violate both the rights of the victims and those of the accused. Belgium is also of the opinion that the financial difficulties invoked by Senegal cannot justify the fact that the latter has done nothing to conduct an inquiry and initiate proceedings. Finally, the Applicant alleges that Senegal's referral of the matter to the African Union in January 2006 does not exempt it from performing its obligations under the Convention, particularly since, at its seventh session in July 2006, the Assembly of Heads of State and Government of the African Union mandated Senegal "to prosecute and ensure that Hissène Habré is tried, on behalf of Africa, by a competent Senegalese court with guarantees for fair trial". Belgium further contends that Senegal cannot rely on its domestic law, or the judgment of the ECOWAS Court of Justice of 18 November 2010, in order to avoid its international responsibility.

The Court notes that, for its part, Senegal has repeatedly affirmed, throughout the proceedings, its intention to comply with its obligation under Article 7, paragraph 1, of the Convention, by taking the necessary measures to institute proceedings against Mr. Habré. Senegal contends that it only sought financial support in order to prepare the trial under favourable conditions, given its unique nature, having regard to the number of victims, the distance that witnesses would have to travel and the difficulty of gathering evidence and that, in referring the matter to the African Union, it was never its intention to relieve itself of its obligations. In respect of the judgment of the ECOWAS Court of Justice, Senegal observes that it is not a constraint of a domestic nature, asserting that, while bearing in mind its duty to comply with its conventional obligation, it is nonetheless subject to the authority of that court, which required it to make fundamental changes to the process begun in 2006, designed to result in a trial at the national level, and to mobilize efforts in order to create an *ad hoc* tribunal of an international character, the establishment of which would be more cumbersome.

The Court considers that Senegal's duty to comply with its obligations under the Convention cannot be affected by the decision of the ECOWAS Court of Justice, that the financial difficulties raised by Senegal cannot justify the fact that it failed to initiate proceedings against Mr. Habré and that the referral of the matter to the African Union cannot justify Senegal's delays in complying with its obligations under the Convention. The Court observes that, under Article 27 of the Vienna Convention on the Law of Treaties, which reflects customary law, Senegal cannot justify its breach of the obligation provided for in Article 7, paragraph 1, of the Convention against Torture by invoking provisions of its internal law, in particular by invoking the decisions as to lack of jurisdiction rendered by its courts in 2000 and 2001, or the fact that it did not adopt the necessary legislation pursuant to Article 5, paragraph 2, of that Convention until 2007.

The Court notes that, while Article 7, paragraph 1, of the Convention does not contain any indication as to the time frame for performance of the obligation for which it provides, it is necessarily implicit in the text that it must be implemented within a reasonable time, in a manner compatible with the object and purpose of the Convention, which is why proceedings should be undertaken without delay. In the present case, the Court concludes that the obligation provided for in Article 7, paragraph 1, required Senegal to take all measures necessary for its implementation as soon as possible, in particular once the first complaint had been filed against Mr. Habré in 2000. Having failed to do so, Senegal has breached and remains in breach of its obligations under Article 7, paragraph 1, of the Convention.

V. Remedies (paras. 118-121)

The Court recalls that, in its final submissions, Belgium requests the Court to adjudge and declare, first, that Senegal breached its international obligations by failing to incorporate in due time into its domestic law the provisions necessary to enable the Senegalese judicial authorities to exercise the universal jurisdiction provided for in Article 5, paragraph 2, of the Convention against Torture, and that it has breached and continues to breach its international obligations under Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention by failing to bring criminal proceedings against Mr. Habré for the crimes he is alleged to have committed, or, otherwise, to extradite him to Belgium for the purposes of such criminal proceedings. Belgium also requests the Court to adjudge and declare that Senegal is required to cease these internationally wrongful acts by submitting without delay the "Hissène Habré case" to its competent authorities for the purpose of prosecution, or, failing that, by extraditing Mr. Habré to Belgium without further ado.

The Court recalls that Senegal's failure to adopt, until 2007, the legislative measures necessary to institute proceedings on the basis of universal jurisdiction, delayed the implementation of its other obligations under the Convention. The Court further recalls that Senegal was in breach of its obligation under Article 6, paragraph 2, of the Convention to make a preliminary inquiry into the crimes of torture alleged to have been committed by Mr. Habré, as well as of the obligation under Article 7, paragraph 1, to submit the case to its competent authorities for the purpose of prosecution. The purpose of these treaty provisions is to prevent alleged perpetrators of acts of torture from going unpunished, by ensuring that they cannot find refuge in any State party. The State in whose territory the suspect is present does indeed have the option of extraditing him to a country which has made such a request, but on the condition that it is to a State which has jurisdiction in some capacity, pursuant to Article 5 of the Convention, to prosecute and try him.

The Court emphasizes that, in failing to comply with its obligations under Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention, Senegal has engaged its international responsibility. Consequently, Senegal is required to cease this continuing wrongful act, in accordance with general international law on the responsibility of States for internationally wrongful acts. Senegal must therefore take, without further delay, the necessary measures to submit the case to its competent authorities for the purpose of prosecution, if it does not extradite Mr. Habré.

VI. Operative clause (para. 122)

> "For these reasons,
>
> THE COURT,
>
> (1) Unanimously,
>
> *Finds* that it has jurisdiction to entertain the dispute between the Parties concerning the interpretation and application of Article 6, paragraph 2, and Article 7, paragraph 1, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment of 10 December 1984, which the Kingdom of Belgium submitted to the Court in its Application filed in the Registry on 19 February 2009;

(2) By fourteen votes to two,

Finds that it has no jurisdiction to entertain the claims of the Kingdom of Belgium relating to alleged breaches, by the Republic of Senegal, of obligations under customary international law;

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Owada, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue, Gaja, Sebutinde; *Judge* ad hoc Kirsch;

AGAINST: *Judge* Abraham; *Judge* ad hoc Sur;

(3) By fourteen votes to two,

Finds that the claims of the Kingdom of Belgium based on Article 6, paragraph 2, and Article 7, paragraph 1, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 are admissible;

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Donoghue, Gaja, Sebutinde; *Judge* ad hoc Kirsch;

AGAINST: *Judge* Xue; *Judge* ad hoc Sur;

(4) By fourteen votes to two,

Finds that the Republic of Senegal, by failing to make immediately a preliminary inquiry into the facts relating to the crimes allegedly committed by Mr. Hissène Habré, has breached its obligation under Article 6, paragraph 2, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984;

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Greenwood, Donoghue, Gaja, Sebutinde; *Judges* ad hoc Sur, Kirsch;

AGAINST: *Judges* Yusuf, Xue;

(5) By fourteen votes to two,

Finds that the Republic of Senegal, by failing to submit the case of Mr. Hissène Habré to its competent authorities for the purpose of prosecution, has breached its obligation under Article 7, paragraph 1, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984;

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Donoghue, Gaja, Sebutinde; *Judge* ad hoc Kirsch;

AGAINST: *Judge* Xue; *Judge* ad hoc Sur;

(6) Unanimously,

Finds that the Republic of Senegal must, without further delay, submit the case of Mr. Hissène Habré to its competent authorities for the purpose of prosecution, if it does not extradite him."

*

Judge Owada appended a declaration to the Judgment of the Court; Judges Abraham, Skotnikov, Cançado Trindade and Yusuf appended separate opinions to the Judgment of the Court; Judge Xue appended a dissenting opinion to the Judgment of the Court; Judge Donoghue appended a declaration to the Judgment of the Court; Judge Sebutinde appended a separate opinion to the Judgment of the Court; Judge *ad hoc* Sur appended a dissenting opinion to the Judgment of the Court.

The present summary of the Judgment appears in the document entitled Summary 2012/4. This summary and the full text of the Judgment can be found on the Court's website, under the case title *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, in the Section entitled "Cases".

11. Whaling in the Antarctic (Australia v. Japan)

On 31 May 2010, Australia instituted proceedings against Japan, alleging that

> "Japan's continued pursuit of a large-scale program of whaling under the Second Phase of its Japanese Whale Research Program under Special Permit in the Antarctic ('JARPA II') [is] in breach of obligations assumed by Japan under the International Convention for the Regulation of Whaling ('ICRW'), as well as its other international obligations for the preservation of marine mammals and marine environment."

The Applicant contends in particular that Japan

> "has breached and is continuing to breach the following obligations under the ICRW:
>
> *(a)* the obligation under paragraph 10 *(e)* of the Schedule to the ICRW to observe in good faith the zero catch limit in relation to the killing of whales for commercial purposes; and

(b) the obligation under paragraph 7 *(d)* of the Schedule to the ICRW to act in good faith to refrain from undertaking commercial whaling of humpback and fin whales in the Southern Ocean Sanctuary."

Australia points out that "having regard to the scale of the JARPA II program, to the lack of any demonstrated relevance for the conservation and management of whale stocks, and to the risks presented to targeted species and stocks, the JARPA II program cannot be justified under Article VIII of the ICRW" (this article regulates the granting of special permits to kill, take and treat whales for purposes of scientific research). Australia alleges further that Japan has also breached and is continuing to breach, *inter alia*, its obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora and under the Convention on Biological Diversity.

At the end of its Application, Australia requests the Court to adjudge and declare that "Japan is in breach of its international obligations in implementing the JARPA II program in the Southern Ocean", and to order that Japan:

"*(a)* cease implementation of JARPA II;
(b) revoke any authorizations, permits or licences allowing the activities which are the subject of this application to be undertaken; and
(c) provide assurances and guarantees that it will not take any further action under the JARPA II or any similar program until such program has been brought into conformity with its obligations under international law."

Australia explains in its Application that it has consistently opposed the JARPA II program, both through individual protests and demarches to Japan and through relevant international forums, including the International Whaling Commission ("IWC").

As the basis for the jurisdiction of the Court, the Applicant invokes the provisions of Article 36, paragraph 2, of the Court's Statute, referring to the declarations recognizing the Court's jurisdiction as compulsory made by Australia on 22 March 2002 and by Japan on 9 July 2007.

By an Order of 13 July 2010, the Court fixed 9 May 2011 as the time-limit for the filing of a Memorial by Australia and 9 March 2012 as the time-limit for the filing of a Counter-Memorial by Japan. Those pleadings were filed within the time-limits thus prescribed.

The Court subsequently decided that the filing of a Reply by Australia and a Rejoinder by Japan was not necessary and that the written phase of the proceedings was therefore closed. The subsequent procedure was reserved for further decision.

12. Frontier Dispute
(Burkina Faso/Republic of Niger)

On 20 July 2010, Burkina Faso and Niger jointly submitted a frontier dispute between them to the Court. By a joint letter dated 12 May 2010 and filed in the Registry on 20 July 2010, the two States notified to the Court a Special Agreement signed in Niamey on 24 February 2009, which entered into force on 20 November 2009. Under the terms of Article 1 of this Special Agreement, the Parties have agreed to submit their frontier dispute to the Court, and that each of them will choose a judge *ad hoc*.

Article 2 of the Special Agreement indicates the subject of the dispute as follows:

> "The Court is requested to:
>
> 1. determine the course of the boundary between the two countries in the sector from the astronomic marker of Tong-Tong (latitude 14° 25′ 04″ N; longitude 00° 12′ 47″ E) to the beginning of the Botou bend (latitude 12° 36′ 18″ N; longitude 01° 52′ 07″ E);
> 2. place on record the Parties' agreement on the results of the work of the Joint Technical Commission on demarcation of the Burkina Faso-Niger boundary with regard to the following sectors:
>
>   *(a)* the sector from the heights of N'Gouma to the astronomic marker of Tong-Tong;
>
>   *(b)* the sector from the beginning of the Botou bend to the River Mekrou."

In Article 3, paragraph 1, the Parties request the Court to authorize the following written proceedings:

> "*(a)* a Memorial filed by each Party not later than nine (9) months after the seising of the Court;
>
> *(b)* a Counter-Memorial filed by each Party not later than nine (9) months after exchange of the Memorials;
>
> *(c)* any other pleading whose filing, at the request of either of the Parties, shall have been authorized or directed by the Court."

Article 7 of the Special Agreement, entitled "Judgment of the Court", reads as follows:

> "1. The Parties accept the Judgment of the Court given pursuant to this Special Agreement as final and binding upon them.
> 2. From the day on which the Judgment is rendered, the Parties shall have eighteen (18) months in which to commence the work of demarcating the boundary.
> 3. In case of difficulty in the implementation of the Judgment, either Party may seise the Court pursuant to Article 60 of its Statute.

> 4. The Parties request the Court to nominate, in its Judgment, three (3) experts to assist them in the demarcation."

Lastly, Article 10 contains the following "Special undertaking":

> "Pending the Judgment of the Court, the Parties undertake to maintain peace, security and tranquility among the populations of the two States in the frontier region, refraining from any act of incursion into the disputed areas and organizing regular meetings of administrative officials and the security services.
>
> With regard to the creation of socio-economic infrastructure, the Parties undertake to hold preliminary consultations prior to implementation."

The Special Agreement was accompanied by an exchange of notes dated 29 October and 2 November 2009 embodying the agreement between the two States on the delimited sectors of the frontier.

By Order of 14 September 2010, the Court fixed 20 April 2011 and 20 January 2012 as the respective time-limits for the filing of a Memorial and Counter-Memorial by each of the Parties. Both were filed within the time-limits thus prescribed.

The Parties did not consider it necessary to submit additional pleadings and the case became ready for hearing.

Pursuant to Article 54, paragraph 1, of the Rules of Court, the Court fixed Monday 8 October 2012 as the date of the opening of the oral proceedings in the case.

13. Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)

On 18 November 2010, the Republic of Costa Rica instituted proceedings against the Republic of Nicaragua in respect of an alleged "incursion into, occupation of and use by Nicaragua's Army of Costa Rican territory as well as [alleged] breaches of Nicaragua's obligations towards Costa Rica" under a number of international treaties and conventions.

In its Application, Costa Rica claims that

> "[b]y sending contingents of its armed forces to Costa Rican territory and establishing military camps therein, Nicaragua is not only acting in outright breach of the established boundary regime between the two States, but also of the core founding principles of the United Nations, namely the principles of territorial integrity and the prohibition of the threat or use of force against any State . . .".

Costa Rica charges Nicaragua with having occupied, in two separate incidents, the territory of Costa Rica in connection with the construction of a canal across Costa Rican territory from the San Juan River to Laguna los Portillos (also known as Harbour Head Lagoon), and with having carried out certain related works of dredging on the San Juan River. Costa Rica states that the

> "ongoing and planned dredging and the construction of the canal will seriously affect the flow of water to the Colorado River of Costa Rica, and will cause further damage to Costa Rican territory, including the wetlands and national wildlife protected areas located in the region".

The Applicant claims that Nicaragua rejected all calls for withdrawal of its armed forces from the occupied territory and all means of negotiation. Costa Rica states further that Nicaragua does not intend to comply with the resolution of 12 November 2010 of the Permanent Council of the Organization of American States calling, in particular, for the withdrawal of Nicaraguan armed forces from the border region, and requests the avoidance of the presence of military or security forces in the area, in order to create a favourable climate for dialogue between the two nations.

Costa Rica accordingly

> "requests the Court to adjudge and declare that Nicaragua is in breach of its international obligations . . . as regards the incursion into and occupation of Costa Rican territory, the serious damage inflicted to its protected rainforests and wetlands, and the damage intended to the Colorado River, wetlands and protected ecosystems, as well as the dredging and canalization activities being carried out by Nicaragua on the San Juan River. In particular the Court is requested to adjudge and declare that, by its conduct, Nicaragua has breached:
>
> (*a*) the territory of the Republic of Costa Rica, as agreed and delimited by the 1858 Treaty of Limits, the Cleveland Award and the first and second Alexander Awards;
> (*b*) the fundamental principles of territorial integrity and the prohibition of use of force under the Charter of the United Nations and the Charter of the Organization of American States;
> (*c*) the obligation imposed upon Nicaragua by Article IX of the 1858 Treaty of Limits not to use the San Juan River to carry out hostile acts;
> (*d*) the obligation not to damage Costa Rican territory;
> (*e*) the obligation not to artificially channel the San Juan River away from its natural watercourse without the consent of Costa Rica;
> (*f*) the obligation not to prohibit the navigation on the San Juan River by Costa Rican nationals;
> (*g*) the obligation not to dredge the San Juan River if this causes damage to Costa Rican territory (including the Colorado River), in accordance with the 1888 Cleveland Award;
> (*h*) the obligations under the Ramsar Convention on Wetlands;
> (*i*) the obligation not to aggravate and extend the dispute by adopting measures against Costa Rica, including the expansion of the

> invaded and occupied Costa Rican territory or by adopting any further measure or carrying out any further actions that would infringe Costa Rica's territorial integrity under international law."

The Court is also requested, in the Application, to determine the reparation which must be made by Nicaragua, in particular in relation to any measures of the kind referred to in the paragraph above.

As the basis for the jurisdiction of the Court, the Applicant invokes Article 36, paragraph 1, of the Statute of the Court by virtue of the operation of Article XXXI of the American Treaty on Pacific Settlement of 30 April 1948 ("Pact of Bogota"), as well as the declarations of acceptance made by Costa Rica on 20 February 1973 and by Nicaragua on 24 September 1929 (modified on 23 October 2001), pursuant to Article 36, paragraph 2, of the Statute of the Court.

On 18 November 2010, Costa Rica also filed a request for the indication of provisional measures, in which it stated that

> "Costa Rica's rights which are subject of the dispute and of this request for provisional measures are its right to sovereignty, to territorial integrity and to non-interference with its rights over the San Juan River, its lands, its environmentally protected areas, as well as the integrity and flow of the Colorado River".

Costa Rica also indicated that the protection of its rights was of real urgency and pointed out that "[t]here is a real risk that without a grant of provisional measures, action prejudicial to the rights of Costa Rica will continue and may significantly alter the factual situation on the ground before the Court has the opportunity to render its final decision".

Costa Rica accordingly

> "requests the Court as a matter of urgency to order the following provisional measures so as to rectify the presently ongoing breach of Costa Rica's territorial integrity and to prevent further irreparable harm to Costa Rica's territory, pending its determination of this case on the merits:
>
> (1) the immediate and unconditional withdrawal of all Nicaraguan troops from the unlawfully invaded and occupied Costa Rican territories;
> (2) the immediate cessation of the construction of a canal across Costa Rican territory;
> (3) the immediate cessation of the felling of trees, removal of vegetation and soil from Costa Rican territory, including its wetlands and forests;
> (4) the immediate cessation of the dumping of sediment in Costa Rican territory;
> (5) the suspension of Nicaragua's ongoing dredging programme aimed at the occupation, flooding and damage of Costa Rican

> territory, as well as at the serious damage to and impairment of the navigation of the Colorado River, giving full effect to the Cleveland Award and pending the determination of the merits of this dispute;
>
> (6) that Nicaragua shall refrain from any other action which might prejudice the rights of Costa Rica, or which may aggravate or extend the dispute before the Court."

Public hearings on the request for the indication of provisional measures submitted by Costa Rica were held from 11 to 13 January 2011.

At the close of its second round of oral observations, the Agent of Costa Rica set out the provisional measures requested by that State as follows:

> "Costa Rica requests the Court to order the following provisional measures:
>
> A. Pending the determination of this case on the merits, Nicaragua shall not, in the area comprising the entirety of Isla Portillos, that is to say, across the right bank of the San Juan River and between the banks of the Laguna los Portillos (also known as Harbour Head Lagoon) and the Taura River ("the relevant area"):
>
> (1) station any of its troops or other personnel;
> (2) engage in the construction or enlargement of a canal;
> (3) fell trees or remove vegetation or soil;
> (4) dump sediment.
>
> B. Pending the determination of this case on the merits, Nicaragua shall suspend its ongoing dredging programme in the River San Juan adjacent to the relevant area.
>
> C. Pending the determination of this case on the merits, Nicaragua shall refrain from any other action which might prejudice the rights of Costa Rica, or which may aggravate or extend the dispute before the Court."

At the close of its second round of oral observations, the Agent of Nicaragua presented the following submissions on behalf of his Government:

> "In accordance with Article 60 of the Rules of Court and having regard to the request for the indication of provisional measures of the Republic of Costa Rica and its oral pleadings, the Republic of Nicaragua respectfully submits that, [f]or the reasons explained during these hearings and any other reasons the Court might deem appropriate, the Republic of Nicaragua asks the Court to dismiss the request for provisional measures filed by the Republic of Costa Rica."

On 8 March 2011, the Court delivered its decision on the request for the indication of provisional measures submitted by Costa Rica

(*I.C.J. Reports 2011 (I)*, p. 6). In its Order, the Court indicated the following provisional measures:

> "(1) Unanimously,
>
> Each Party shall refrain from sending to, or maintaining in the disputed territory, including the *caño* [the canal cut by Nicaragua], any personnel, whether civilian, police or security;
>
> (2) By thirteen votes to four,
>
> Notwithstanding point (1) above, Costa Rica may dispatch civilian personnel charged with the protection of the environment to the disputed territory, including the *caño*, but only in so far as it is necessary to avoid irreparable prejudice being caused to the part of the wetland where that territory is situated; Costa Rica shall consult with the Secretariat of the Ramsar Convention in regard to these actions, give Nicaragua prior notice of them and use its best endeavours to find common solutions with Nicaragua in this respect;
>
> IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Cançado Trindade, Yusuf, Greenwood, Donoghue; *Judge* ad hoc Dugard;
>
> AGAINST: *Judges* Sepúlveda-Amor, Skotnikov, Xue; *Judge* ad hoc Guillaume;
>
> (3) Unanimously,
>
> Each Party shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve;
>
> (4) Unanimously,
>
> Each Party shall inform the Court as to its compliance with the above provisional measures."

*

Judges Koroma and Sepúlveda-Amor appended separate opinions to the Order. Judges Skotnikov, Greenwood and Xue appended declarations to the Order. Judge *ad hoc* Guillaume appended a declaration to the Order. Judge *ad hoc* Dugard appended a separate opinion to the Order.

The full text of the Order is available on the website of the Court under the case title. Please note that in this case, the document entitled Summary 2011/1, available online, also provides summaries of Judges' opinions and declarations.

By an Order of 5 April 2011, the Court, taking account of the views of the Parties, fixed 5 December 2011 and 6 August 2012 respectively, as the time-limits for the filing of a Memorial by the Republic of Costa Rica and a Counter-Memorial by the Republic of Nicaragua. By an Order of 5 April 2011, the Court, taking account of the views of the Parties, fixed 5 December 2011 and 6 August 2012 respectively, as the time-limits for the filing of a Memorial by Costa Rica and a Counter-Memorial by Nicaragua. The Memorial of Costa Rica was filed within the time-limit thus fixed.

14. Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) *(Cambodia v. Thailand)*

On 28 April 2011, the Kingdom of Cambodia submitted, by an Application filed in the Registry of the Court, a request for interpretation of the Judgment rendered by the Court on 15 June 1962 in the case concerning the *Temple of Preah Vihear (Cambodia v. Thailand)*.

In its Application, Cambodia indicates the "points in dispute as to the meaning or scope of the Judgment", as stipulated by Article 98 of the Rules of Court. It states in particular that:

> "(1) according to Cambodia, the Judgment [rendered by the Court in 1962] is based on the prior existence of an international boundary established and recognized by both States;
>
> (2) according to Cambodia, that boundary is defined by the map to which the Court refers on page 21 of its Judgment . . ., a map which enables the Court to find that Cambodia's sovereignty over the Temple is a direct and automatic consequence of its sovereignty over the territory on which the Temple is situated . . .;
>
> (3) according to . . . [Cambodia], Thailand is under an obligation [pursuant to the Judgment] to withdraw any military or other personnel from the vicinity of the Temple on Cambodian territory. [T]his is a general and continuing obligation deriving from the statements concerning Cambodia's territorial sovereignty recognized by the Court in that region."

Cambodia asserts that "Thailand disagrees with all of these points". The Applicant seeks to base the jurisdiction of the Court on Article 60 of the Statute of the Court, which provides that "[i]n the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party". Cambodia also invokes Article 98 of the Rules of Court.

It explains in its Application that, while "Thailand does not dispute Cambodia's sovereignty over the Temple — and only over the Temple itself", it does, however, call into question the 1962 Judgment in its entirety.

Cambodia contends that "in 1962, the Court placed the Temple under Cambodian sovereignty, because the territory on which it is situated is on the Cambodian side of the boundary", and that "[t]o refuse Cambodia's sovereignty over the area beyond the Temple as far as its 'vicinity' is to say to the Court that the boundary line which it recognized [in 1962] is wholly erroneous, *including in respect of the Temple itself*".

Cambodia emphasizes that the purpose of its request is to seek an explanation from the Court regarding the "meaning and . . . scope of its Judgment, within the limit laid down by Article 60 of the Statute". It adds that such an explanation, "which would be binding on Cambodia and Thailand, . . . could then serve as a basis for a final resolution of this dispute through negotiation or any other peaceful means".

Regarding the facts underlying its Application, Cambodia recalls that it instituted proceedings against Thailand in 1959, and that certain problems arose after the Court had given judgment on the merits in 1962. It goes on to describe the more recent events which directly motivated the present Application (failure of endeavours aimed at achieving agreement between the two States on a joint interpretation of the 1962 Judgment; deterioration in relations following "discussions within UNESCO to have the Temple declared a World Heritage Site"; armed incidents between the two States in April 2011).

At the close of its Application, Cambodia asks the Court to adjudge and declare that

> "[t]he obligation incumbent upon Thailand to 'withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory' [point 2 of the operative clause of the Judgment rendered by the Court in 1962] is a particular consequence of the general and continuing obligation to respect the integrity of the territory of Cambodia, that territory having been delimited in the area of the Temple and its vicinity by the line on the map [referred to on page 21 of the Judgment], on which [the Judgment] is based."

On the same day, Cambodia also filed a request for the indication of provisional measures, pursuant to Article 41 of the Statute and Article 73 of the Rules of Court. The Applicant explained that "[s]ince 22 April 2011, serious incidents have occurred in the area of the Temple of Preah Vihear, . . . as well as at several locations along that boundary between the two States, causing fatalities, injuries and the evacuation of local inhabitants".

Cambodia stated that "[s]erious armed incidents are continuing at the time of filing . . . [its] request [for interpretation], for which Thailand is entirely responsible".

According to the Applicant, "[m]easures are urgently required, both to safeguard the rights of Cambodia pending the Court's decision — rights relating to its sovereignty, its territorial integrity and to the duty of non-interference incumbent upon Thailand — and to avoid aggravation of the dispute". Cambodia further explained that, "in the unfortunate event that its request were to be rejected, and if Thailand persisted in its conduct, the damage to the Temple of Preah Vihear, as well as irremediable losses of life and human suffering as a result of these armed clashes, would become worse".

In conclusion, Cambodia:

"respectfully [requested] the Court to indicate the following provisional measures, pending the delivery of its judgment on the request for interpretation:

> an immediate and unconditional withdrawal of all Thai forces from those parts of Cambodian territory situated in the area of the Temple of Preah Vihear;
> a ban on all military activity by Thailand in the area of the Temple of Preah Vihear;
> that Thailand refrain from any act or action which could interfere with the rights of Cambodia or aggravate the dispute in the principal proceedings."

Furthermore, "[b]ecause of the gravity of the situation, and for the reasons expressed above, Cambodia respectfully request[ed] the Court to indicate these measures as a matter of urgency, and to fix a date as soon as possible for the subsequent proceedings".

Public hearings on the request for the indication of provisional measures filed by Cambodia were held on Monday, 30 and Tuesday, 31 May 2011.

At the close of the second round of oral observations, Cambodia reiterated its request for the indication of provisional measures; the Agent of Thailand, for his part, presented the following submissions on behalf of his Government:

> "[i]n accordance with Article 60 of the Rules of Court and having regard to the Request for the indication of provisional measures of the Kingdom of Cambodia and its oral pleadings, the Kingdom of Thailand respectfully requests the Court to remove the case introduced by the Kingdom of Cambodia on 28 April 2011 from the General List".

On 18 July 2011, the Court delivered its Order (*I.C.J. Reports 2011 (II)*, p. 537) on the request for the indication of provisional measures submitted by Cambodia.

The operative part of the Order reads as follows:

> "For these reasons,
>
> THE COURT,
>
> (A) Unanimously,
>
> *Rejects* the Kingdom of Thailand's request to remove the case introduced by the Kingdom of Cambodia on 28 April 2011 from the General List of the Court;
>
> (B) *Indicates* the following provisional measures:
>
> (1) By eleven votes to five,
>
> Both Parties shall immediately withdraw their military personnel currently present in the provisional demilitarized zone, as defined in paragraph 62 of the present Order, and refrain from any military

presence within that zone and from any armed activity directed at that zone;

IN FAVOUR: *Vice-President* Tomka; *Judges* Koroma, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood; *Judge* ad hoc Guillaume;

AGAINST: *President* Owada; *Judges* Al-Khasawneh, Xue, Donoghue; *Judge* ad hoc Cot;

(2) By fifteen votes to one,

Thailand shall not obstruct Cambodia's free access to the Temple of Preah Vihear or Cambodia's provision of fresh supplies to its non-military personnel in the Temple;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue; *Judges* ad hoc Guillaume, Cot;

AGAINST: *Judge* Donoghue;

(3) By fifteen votes to one,

Both Parties shall continue the co-operation which they have entered into within ASEAN and, in particular, allow the observers appointed by that organization to have access to the provisional demilitarized zone;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue; *Judges* ad hoc Guillaume, Cot;

AGAINST: *Judge* Donoghue;

(4) By fifteen votes to one,

Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue; *Judges* ad hoc Guillaume, Cot;

AGAINST: *Judge* Donoghue;

(C) By fifteen votes to one,

Decides that each Party shall inform the Court as to its compliance with the above provisional measures;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue; *Judges* ad hoc Guillaume, Cot;

AGAINST: *Judge* Donoghue;

(D) By fifteen votes to one,

Decides that, until the Court has rendered its judgment on the request for interpretation, it shall remain seised of the matters which form the subject of this Order.

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue; *Judges* ad hoc Guillaume, Cot;

AGAINST: *Judge* Donoghue."

*

President Owada appended a dissenting opinion to the Order of the Court; Judge Koroma appended a declaration to the Order of the Court; Judge Al-Khasawneh appended a dissenting opinion to the Order of the Court; Judge Cançado Trindade appended a separate opinion to the Order of the Court; Judges Xue and Donoghue appended dissenting opinions to the Order of the Court; Judge *ad hoc* Guillaume appended a declaration to the Order of the Court; Judge *ad hoc* Cot appended a dissenting opinion to the Order of the Court.

By letters dated 24 November 2011, the Registrar of the Court informed the Parties that the Court had decided to afford them the opportunity of furnishing further written explanations, pursuant to Article 98, paragraph 4, of the Rules of Court, and had fixed 8 March 2012 and 21 June 2012 as the respective time-limits for the filing by Cambodia and Thailand of such explanations. The further written explanations were filed within the time-limits thus fixed.

15. Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)

On 22 December 2011, the Republic of Nicaragua instituted proceedings against the Republic of Costa Rica with regard to "violations of Nicaraguan sovereignty and major environmental damages to its territory". Nicaragua contends that Costa Rica is carrying out major construction works along most of the border area between the two countries with grave environmental consequences.

In its Application, Nicaragua claims *inter alia* that "Costa Rica's unilateral actions . . . threaten to destroy the San Juan de Nicaragua River and its fragile ecosystem, including the adjacent biosphere reserves and internationally protected wetlands that depend upon the clean and uninterrupted flow of the river for their survival". According to the Applicant, "[t]he most immediate threat to the river and its environment is posed by Costa Rica's construction of a road running parallel and in extremely close proximity to the southern bank of the river, and extending for a distance of at least 120 kilometres, from Los Chiles in the west to Delta in the east". It is also stated in the Application that "[t]hese works have already caused and will continue to cause significant economic damage to Nicaragua".

Nicaragua accordingly:

> "requests the Court to adjudge and declare that Costa Rica has breached:
>
> *(a)* its obligation not to violate Nicaragua's territorial integrity as delimited by the 1858 Treaty of Limits, the Cleveland Award of 1888 and the five Awards of the Umpire E.P. Alexander of 30 September 1897, 20 December 1897, 22 March 1898, 26 July 1899 and 10 March 1900;
>
> *(b)* its obligation not to damage Nicaraguan territory;
>
> *(c)* its obligations under general international law and the relevant environmental conventions, including the Ramsar Convention on Wetlands, the Agreement over the Border Protected Areas between Nicaragua and Costa Rica (International System of Protected Areas for Peace [SI-A-PAZ] Agreement), the Convention on Biological Diversity and the Convention for the Conservation of the Biodiversity and Protection of the Main Wild Life Sites in Central America."

Furthermore, Nicaragua requests the Court to adjudge and declare that Costa Rica must:

> "*(a)* restore the situation to the *status quo ante*;
>
> *(b)* pay for all damages caused including the costs added to the dredging of the San Juan River;
>
> *(c)* not undertake any future development in the area without an appropriate transboundary Environmental Impact Assessment and that this assessment must be presented in a timely fashion to Nicaragua for its analysis and reaction."

Finally, Nicaragua requests the Court to adjudge and declare that Costa Rica must:

> "*(a)* cease all the constructions underway that affect or may affect the rights of Nicaragua;
>
> *(b)* produce and present to Nicaragua an adequate Environmental Impact Assessment with all the details of the works."

As the basis for the jurisdiction of the Court, the Applicant invokes Article 36, paragraph 1, of the Statute of the Court by virtue of the operation of Article XXXI of the American Treaty on Pacific Settlement of 30 April 1948 (Pact of Bogotá), as well as the declarations of acceptance made by Nicaragua on 24 September 1929 (modified on 23 October 2001) and by Costa Rica on 20 February 1973, pursuant to Article 36, paragraph 2, of the Statute of the Court.

Nicaragua asserts that Costa Rica has repeatedly refused to give Nicaragua appropriate information on the construction works it is undertaking and has denied that it has any obligation to prepare and provide to Nicaragua an Environmental Impact Assessment, which would allow for an evaluation of the works. The Applicant therefore requests the Court to order Costa Rica to produce such a document and to communicate it to Nicaragua. It adds that "in all circumstances and particularly if this request does not produce results, [it] reserves its right to formally request provisional measures".

Nicaragua also states that as "the legal and factual grounds of the [Application] are connected to the ongoing case concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*", it "reserves its rights to consider in a subsequent phase of the present proceedings . . . whether to request that the proceedings in both cases should be joined".

By an Order of 23 January 2012, the Court fixed 19 December 2012 and 19 December 2013 as the respective time-limits for the filing of a Memorial by Nicaragua and a Counter-Memorial by Costa Rica. The subsequent procedure has been reserved for further decision.

The full text of the Order and of the present summary are available on the website of the Court under the case title. Please note that in this case, the document entitled Summary 2011/5, available online, also provides summaries of Judges' opinions and declarations.

B. REQUEST FOR ADVISORY OPINION

Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development

On 26 April 2010, the Court received a request for an advisory opinion from the International Fund for Agricultural Development (IFAD), aimed at obtaining the reversal of a judgment rendered by an administrative court, the Administrative Tribunai of the International Labour Organization (hereinafter "the Tribunal" or "ILOAT").

In its Judgment No. 2867 (*Saez Garcia v. IFAD*), delivered on 3 February 2010, the Tribunal found that it had jurisdiction under the terms of Article II of its Statute to rule on the merits of a complaint against IFAD introduced by Ms Ana Teresa Saez Garcia, a former staff member of the Global Mechanism of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (hereinafter "the Global Mechanism"). Ms Saez Garcia held a fixed-term contract of employment which was due to expire on 15 March 2006 (see *I.C.J. Annual Report 2009-2010, et seq.*).

The Executive Board of IFAD, by a resolution adopted at its ninety-ninth session on 22 April 2010, acting within the framework of Article XII of the Annex of the Statute of the Tribunal, decided to challenge the above-mentioned judgment of the Tribunal and to refer the question of the validity of that judgment to the International Court of Justice for an advisory opinion.

The request for an advisory opinion was transmitted to the Court by a letter from the President of the Executive Board of IFAD dated 23 April 2010 and received in the Registry on 26 April 2010.

It contained the nine following questions:

> "I. Was the ILOAT competent, under Article II of its Statute, to hear the complaint introduced against the International Fund for Agricultural Development (hereby the Fund) on 8 July 2008 by Ms S-G., an individual who was a member of the staff of the Global Mechanism of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (hereby the Convention) for which the Fund acts merely as housing organization?
>
> II. Given that the record shows that the parties to the dispute underlying the ILOAT's Judgment No. 2867 were in agreement that the Fund and the Global Mechanism are separate legal entities and that the Complainant was a member of the staff of the Global Mechanism, and considering all the relevant documents, rules and principles, was the ILOAT's statement, made in support of its decision confirming its jurisdiction, that 'the Global Mechanism is to be assimilated to the various administrative units of the Fund for all administrative purposes' and that the 'effect of this is that administrative decisions taken by the Managing Director in relation to staff in the Global Mechanism are, in law, decisions of the Fund' outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?
>
> III. Was the ILOAT's general statement, made in support of its decision confirming its jurisdiction, that 'the personnel of the Global Mechanism are staff members of the Fund' outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?
>
> IV. Was the ILOAT's decision confirming its jurisdiction to entertain the Complainant's plea alleging an abuse of authority by the Global Mechanism's Managing Director outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?
>
> V. Was the ILOAT's decision confirming its jurisdiction to entertain the Complainant's plea that the Managing Director's decision not to renew the Complainant's contract constituted an error of law outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

VI. Was the ILOAT's decision confirming its jurisdiction to interpret the Memorandum of Understanding between the Conference of the Parties to the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa and IFAD (hereby the MoU), the Convention, and the Agreement Establishing IFAD beyond its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

VII. Was the ILOAT's decision confirming its jurisdiction to determine that by discharging an intermediary and supporting role under the MoU, the President was acting on behalf of IFAD outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

VIII. Was the ILOAT's decision confirming its jurisdiction to substitute the discretionary decision of the Managing Director of the Global Mechanism with its own outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

IX. What is the validity of the decision given by the ILOAT in its Judgment No. 2867?"

By letters dated 26 April 2010, the Registrar of the Court gave notice, pursuant to Article 66, paragraph 1, of the Statute, of the request for an advisory opinion to all States entitled to appear before the Court.

By an Order of 29 April 2010, the Court:

"1. [decided] that the International Fund for Agricultural Development and its Member States entitled to appear before the Court, the States parties to the United Nations Convention to Combat Desertification entitled to appear before the Court and those specialized agencies of the United Nations which have made a declaration recognizing the jurisdiction of the Administrative Tribunal of the International Labour Organization pursuant to Article II, paragraph 5, of the Statute of the Tribunal were considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion;

2. [fixed] 29 October 2010 as the time-limit within which written statements on these questions could be presented to the Court, in accordance with Article 66, paragraph 2, of the Statute;

3. [fixed] 31 January 2011 as the time-limit within which States and organizations having presented written statements could submit written comments on the other written statements, in accordance with Article 66, paragraph 4, of the Statute;

4. [decided] that the President of the International Fund for Agricultural Development should transmit to the Court any statement setting forth the views of the Complainant in the proceedings against the Fund before the Administrative Tribunal of the International Labour Organization which the

> said Complainant may wish to bring to the attention of the Court, and fixed 29 October 2010 as the time-limit within which any possible statement by the Complainant who is the subject of the judgment could be presented to the Court and 31 January 2011 as the time-limit within which any possible comments by the Complainant could be presented to the Court."

On 26 October 2010, the General Counsel of IFAD submitted a written statement of the Fund and a statement setting forth the views of the Complainant.

On 28 October 2010, the Ambassador of the Plurinational State of Bolivia to the Kingdom of the Netherlands submitted a written statement of the Government of Bolivia.

By Order of 24 January 2011, the President of the Court extended to 11 March 2011 the time-limit within which States and organizations having presented written statements may submit written comments on the other written statements, in accordance with Article 66, paragraph 4, of the Statute, as well as the time-limit within which any comments by the Complainant in the proceedings against the Fund before the Tribunal may be presented to the Court. The time-limits were extended in response to a request to that effect made by the General Counsel of IFAD.

The written comments of the Fund and those of the Complainant were presented within the time-limit thus extended.

In its Advisory Opinion rendered on 1 February 2012 (*I.C.J. Reports 2012 (I)*, p. 10), the Court responded to IFAD's request as follows:

> "THE COURT,
>
> (1) Unanimously,
>
> *Finds* that it has jurisdiction to give the advisory opinion requested;
>
> (2) Unanimously,
>
> *Decides* to comply with the request for an advisory opinion;
>
> (3) *Is of the opinion:*
>
> *(a)* with regard to Question I,
>
> Unanimously,
>
> *That* the Administrative Tribunal of the International Labour Organization was competent, under Article II of its Statute, to hear the complaint introduced against the International Fund for Agricultural Development on 8 July 2008 by Ms Ana Teresa Saez Garcia;
>
> *(b)* with regard to Questions II to VIII,
>
> Unanimously,
>
> *That* these questions do not require further answers from the Court;
>
> *(c)* with regard to Question IX,
>
> Unanimously,

> *That* the decision given by the Administrative Tribunal of the International Labour Organization in its Judgment No. 2867 is valid."

*

Judge Cançado Trindade appended a separate opinion to the Advisory Opinion of the Court; Judge Greenwood appended a declaration to the Advisory Opinion of the Court.

The present summary of the Advisory Opinion appears in the document entitled Summary 2012/1. This summary and the full text of the Advisory Opinion can be found on the Court's website, under the case title *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development*, under the heading "Cases/Advisory Proceedings".

Reasoning of the Court

History of the proceedings (paras. 1-18)

The Court began by reciting the history of the proceedings and the submissions of the Parties as set out here above.

I. The Court's jurisdiction (paras. 19-27)

The Court first addresses the question whether it possesses jurisdiction to reply to the request. After recalling that the request for an advisory opinion was submitted under Article XII of the Annex to the Statute of the Administrative Tribunal of the International Labour Organization (hereinafter "ILOAT"), the Court notes that the Executive Board has duly made the declaration recognizing the jurisdiction of the Tribunal, required by Article II, paragraph 5, of the Statute of the Tribunal. The Court observes that the power of the Executive Board to request an advisory opinion and the jurisdiction of the Court to give such an opinion are founded on the Charter of the United Nations and the Statute of the Court, and not on Article XII of the Annex to the Statute of the Tribunal alone. In addition to the latter provision, the Court examines Article 96 of the United Nations Charter, Article 65, paragraph 1, of its Statute and Article XIII, paragraph 2, of the Relationship Agreement between the United Nations and the Fund (hereinafter the "Relationship Agreement"). (These provisions are included in Annex 2 to this summary.) The Court states that the Fund's request for review of a judgment concerning its hosting of the Global Mechanism and the question of whether it employed Ms Saez Garcia do present "legal questions" which "arise within the scope of the Fund's activities". The Court notes that, while the authorization given to IFAD by Article XIII, paragraph 2, of the Relationship Agreement excludes "questions concerning the mutual relationships of the Fund and the United Nations or other specialized agencies", such exclusion does not prevent the Court from considering the relationships between the Fund and the Global Mechanism or the Conference of the Parties of the Convention on Desertification (hereinafter "COP"), which are not specialized agencies, so far as these relationships are raised by the questions put to the Court by IFAD. Accordingly, the Court finds that the Fund has the power to submit for an advisory opinion the question of the validity of the decision rendered by the ILOAT in its Judgment No. 2867 and that the Court has jurisdiction to consider the request for an advisory opinion.

II. Scope of the Court's jurisdiction (paras. 28-32)

Under Article VI, paragraph 1, of the Statute of the ILOAT, the Tribunal's judgment is final and without appeal. However, pursuant to Article XII, paragraph 1, of the Statute of the ILOAT and Article XII, paragraph 1, of its Annex, respectively, the ILO and international organizations having made the declaration recognizing the jurisdiction of the ILOAT may nonetheless challenge the ILOAT judgment within the terms of these provisions. Under Article XII, paragraph 2, of the Statute of the ILOAT and of its Annex, the opinion of this Court given in terms of those provisions is "binding". As the Court said in *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against Unesco* (*Advisory Opinion, I.C.J. Reports 1956*, p. 77, hereinafter the "1956 Advisory Opinion"), that effect goes beyond the scope attributed by the Charter and the Statute of the Court to an advisory opinion. It *does not affect* the way in which the Court functions, that continues to be determined by its Statute and Rules. The power of the Court to review a judgment of the ILOAT by reference to Article XII of the Annex to the Statute of the ILOAT at the request of the relevant specialized agency is limited to two grounds: that the Tribunal wrongly confirmed its jurisdiction or the decision is vitiated by a fundamental fault in the procedure followed. The Court cites the relevant section of the 1956 Advisory Opinion, in which the Court emphasized the limits of the first of these grounds. The Court observes that the 1956 Advisory Opinion stated that the review is not in the nature of an appeal on the merits of the judgment and that the challenge cannot properly be transformed into a procedure against the manner in which jurisdiction has been exercised or against the substance of the decision. With regard to the other ground, the Court, referring to its Advisory Opinion on *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal*, recalls that a fundamental fault in procedure occurs when an error of procedure "is of such a kind as to violate the official's right to a fair hearing . . . and in that sense to deprive him of justice" (*I.C.J. Reports 1973*, p. 209, para. 92.)

III. The Court's Discretion (paras. 33-48)

The Court recalls that Article 65 of its Statute makes it clear that it has a discretion whether to reply to a request for an advisory opinion

In exercising it, the Court has to have regard to its character, both as a principal organ of the United Nations and as a judicial body. The Court early declared that the exercise of its advisory jurisdiction represents its participation in the activities of the Organization and, in principle, a request should not be refused (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, pp. 71-72). This is also reflected in the Court's later statement, in the only other challenge to a decision of the ILOAT brought to it, that "compelling reasons" would be required to justify a refusal (*Judgments of the Administrative Tribunal of the ILO upon Complaints Made against Unesco, Advisory Opinion, I.C.J. Reports 1956*, p. 86).

The Court then examines the principle of equality before it of IFAD on the one hand and the official on the other, including equality of access to the Court and equalities in the proceedings before the Court. The Court considers that the principle of equality, which follows from the requirements of good administration of justice, must now be understood as including access on an equal basis to available appellate or similar remedies unless an exception can be justified on objective and reasonable grounds. Questions may now properly be asked whether the system established in 1946 meets the present-day principle of equality of access to courts and tribunals. While the Court is not in a position to reform this system, it can attempt to ensure, so far as possible, that there is equality in the proceedings before it. In the present case, the unequal position before the Court of the employing institution and its official, arising from provisions of the Court's Statute, has been substantially alleviated by the Court's decision that the President of the Fund was to transmit to it any statement setting forth the views of Ms Saez Garcia which she might wish to bring to the attention of the Court, and by the Court's decision that there would be no oral proceedings (since the Court's Statute does not allow individuals to appear in hearings in such cases). Although the process of ensuring equality in the proceedings was not without its difficulties, the Court concludes that, by the end of that process, it does have the information it requires to decide on the questions submitted; that both the Fund and Ms Saez Garcia *have* had adequate and in large measure equal opportunities to present their case and to answer that made by the other; and that, in essence, the principle of equality in the proceedings before the Court, required by its inherent judicial character and by the good administration of justice, has been met.

In light of the analysis above, the Court maintains its concern about the inequality of access to the Court and remains concerned about the length of time it took the Fund to comply with the procedures aimed at ensuring equality in the present proceedings. Nevertheless, taking the circumstances of the case as a whole, and in particular the steps it has taken to reduce the inequality in the proceedings before it, the Court considers that the reasons that could lead it to decline to give an advisory opinion are not sufficiently compelling to require it to do so.

IV. Merits (paras. 49-99)

The Court recalls that the request for an advisory opinion concerns the validity of the Judgment given by the ILOAT relating to Ms Saez García's contract of employment. Ms Saez García, a national of Venezuela, was offered by IFAD on 1 March 2000 a two-year fixed-term contract at P-4 level to serve as a Programme Officer in the Global Mechanism, an entity hosted by IFAD. The purpose of the Global Mechanism — established by the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa — is to mobilize and channel financial resources to developing countries. She accepted this offer on 17 March 2000. Subsequently, her contract was twice extended, to 15 March 2004 and 15 March 2006, respectively. In addition, her title changed to "Programme Manager, Latin America Region", from 22 March 2002, and is subsequently referred to, in the notice of non-renewal of her contract as "[P]rogramme [M]anager for GM's regional desk for Latin America and the Caribbean". By a memorandum of 15 December 2005, the Managing Director of the Global Mechanism informed her that the COP had decided to cut the Global Mechanism's budget for 2006-2007 by 15 per cent. As a result, the number of staff paid through the core budget had to be reduced. Her post would therefore be abolished and her contract would not be renewed upon expiry on 15 March 2006. He offered her a six-month contract as consultant from 26 March to 15 September 2006 as "an attempt to relocate her and find a suitable alternative employment". Ms Saez García did not accept that contract. On 10 May 2006, Ms Saez García requested a facilitation process, which ended with no settlement on 22 May 2007. She then challenged the Managing Director's decision by filing an appeal with the Joint Appeals Board of the Fund (hereinafter the "JAB") under IFAD's Human Resources Procedures Manual (hereinafter "HRPM"). On 13 December 2007 the JAB unanimously recommended that Ms Saez García be reinstated and that she be awarded a payment of lost salaries, allowances and entitlements. On 4 April 2008 the President of the Fund rejected the recommendations. Ms Saez García then filed on 8 July 2008 a complaint with the Tribunal requesting it to "quash the decision of the President of IFAD rejecting the Complainant's appeal", order her reinstatement and make various monetary awards. In its Judgment of 3 February 2010, the Tribunal decided that "[t]he President's decision of 4 April 2008 is set aside" and made orders for the payment of damages and costs.

With respect to the powers of, and relationships between, the Fund, the Global Mechanism, the COP and the Permanent Secretariat of the Convention on Desertification, the Court examines the provisions of the Convention on Desertification and the Memorandum of Understanding between the Conference of the Parties of the Convention to Combat Desertification and the Fund regarding the Modalities and Administrative

Operations of the Global Mechanism (hereinafter the "MOU"). The Court observes that, while the Permanent Secretariat is institutionally linked to the United Nations, it is not fully integrated in the work programme and management structure of any particular department or programme. The Court recalls that, under the Permanent Secretariat's Headquarters Agreement with Germany, the Convention Secretariat possesses the legal capacity to contract, to acquire and dispose of movable and immovable property and to institute legal proceedings in the host country. The Court observes that, under the Convention on Desertification, the COP and the Permanent Secretariat are expressly established as institutions and given various powers. By contrast, the Global Mechanism is not included in the Part of the Convention on "Institutions" and it is not given any express powers of contracting or entering into any agreements by the Convention nor by a headquarters agreement such as that relating to the Permanent Secretariat. Moreover, the record before the Court does not include any instances of it entering into contracts or agreements. The position of the Global Mechanism may also be contrasted with that of the Fund, which possesses international legal personality by virtue of Article 10, Section 1, of the Agreement establishing IFAD, and is given the capacity to contract and to acquire and dispose of movable and immovable property under Article II, Section 3, of the Convention on the Privileges and the Immunities of the Specialized Agencies of 21 November 1947. The Court notes that the Convention directs the COP to identify an organization to house it and to make appropriate arrangements with such an organization for its administrative operations. It was for this reason that a Memorandum of Understanding was concluded between the COP and IFAD in 1999 as described above. Neither the Convention nor the MOU expressly confer legal personality on the Global Mechanism or otherwise endow it with the capacity to enter into legal arrangements. Further, in light of the different instruments setting up IFAD, the COP, the Global Mechanism and the Permanent Secretariat, and of the practice included in the record before the Court, the Global Mechanism had no power and has not purported to exercise any power to enter into contracts, agreements or "arrangements", internationally or nationally.

4. *Response to Question I* (paras. 62-95)

The Court then turns to the questions put to it for an advisory opinion and notes that such questions should be asked in neutral terms rather than assuming conclusions of law that are in dispute. They should not include reasoning or argument. The questions asked in this case depart from that standard as reflected in normal practice. The Court will nevertheless address them.

The Court is requested to give its opinion on the competence of the ILOAT to hear the complaint brought against the Fund by Ms Saez Garcia on 8 July 2008. The competence of the Tribunal regarding complaints filed by staff members of organizations other than the ILO is based on Article II, paragraph 5, of its Statute, according to which "[t]he Tribunal shall also be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of any other international organization meeting the standards set out in the Annex" to the Statute of the ILOAT and having made a declaration recognizing the jurisdiction of the Tribunal.

The Fund considers Ms Saez Garcia to be a staff member of the Global Mechanism, not the Fund, and therefore objected to the jurisdiction of the Tribunal over her complaint. Before the Tribunal, the Fund contended that its acceptance of the jurisdiction of the ILOAT did not extend to entities that are hosted by it pursuant to international agreements. It maintained that the Global Mechanism was not an organ of the Fund, and that, even if the Fund administered the Global Mechanism, this did not make the Complainant a staff member of the Fund; nor did it make the actions of the Managing Director of the Global Mechanism attributable to the Fund. According to the Fund, despite the fact that the staff regulations, rules and policies of IFAD were applied to the Complainant, she was not a staff member of the Fund. Conversely, the Complainant submitted that she was a staff member of IFAD throughout the relevant period until her separation on 15 March 2006, and that her letters of appointment and renewal of contract all offered her an appointment with the Fund. In its Judgment No. 2867 of 3 February 2010, the Tribunal rejected the jurisdictional objections made by the Fund and declared itself competent to entertain all the pleas set out in the complaint submitted by Ms Saez Garcia. It is this confirmation by the Tribunal of its "competence to hear" the complaint filed by Ms Saez Garcia that is challenged by the Executive Board of the Fund and is the object of the first question put to the Court. Under Article II, paragraph 5, of its Statute, the Tribunal could hear the complaint only if the Complainant was an official of an organization that has recognized the jurisdiction of the Tribunal, and if the complaint related to the non-observance of the terms of appointment of such an official or the provisions of the staff regulations of the organization. The first set of conditions has to be examined with reference to the competence *ratione personae* of the Tribunal, while the second has to be considered within the context of its competence *ratione materiae*. The Court will examine these two sets of conditions below.

2. *Jurisdiction* ratione personae *of the Tribunal in relation to the complaint submitted by Ms Saez Garcia* (paras. 71-82)

Since recourse to the ILOAT is open to staff members of IFAD, the Court will now consider whether Ms Saez Garcia was an official of the Fund, or of some other entity that did not recognize the jurisdiction of the Tribunal. The Court notes that the word "official" and the words "staff member" may be considered to have the same meaning in the present context and thus uses both terms interchangeably. The IFAD Human Resources Policy defines a staff member as "a person or persons holding a regular, career, fixed-term, temporary or indefinite contract with the Fund". To qualify as a staff member of the Fund, Ms Saez Garcia would have to hold one of the above-mentioned contracts with the Fund. The Court notes that on 1 March 2000, Ms Saez Garcia received an offer of employment, written on the Fund letterhead, for "a fixed-term appointment for a period of two years with the International Fund for Agricultural Development (IFAD)". The letter stated that the appointment "[would] be made in accordance with the General provisions of the IFAD Personnel Policies Manual . . . [and] with such Administrative Instructions as may be issued . . . regarding the application of the Manual". The offer of appointment also noted that her contract might be terminated by IFAD with one month's written notice and that she was subject to a probationary period as prescribed in the Personnel Policies Manual (hereinafter the "PPM"). Moreover, under the terms of the offer, she was required to give written notice of at least one month to IFAD of any desire to terminate her contract. The renewals of her contract to March 2004 and to March 2006, respectively, referred to an "extension of [her] appointment with the International Fund for Agricultural Development". It was also said in the letters of renewal that all other conditions of her employment would remain unchanged and that her appointment would "continue to be governed by the Personnel Policies Manual, together with the provisions of the Human Resources Handbook regarding the application of the Manual".

The Court observes that a contract of employment entered into between an individual and an international organization is a source of rights and duties for the parties to it. In this context, the Court notes that the offer of appointment accepted by Ms Saez Garcia on 17 March 2000 was made on behalf of the Fund by the Director of its Personnel Division, and that the subsequent renewals of this contract were signed by personnel officers of the same Division of the Fund. The Fund does not question the authority vested in these officials to act on its behalf on personnel matters. These offers were made in accordance with the general provisions of the PPM, which then contained the regulations and rules applicable to staff members of the Fund. As the Court stated in its 1956 Advisory Opinion, staff regulations and rules of the organization in question "constitute the legal basis on which the interpretation of the contract must rest" (*I.C.J. Reports 1956*, p. 94). It follows from this that an employment relationship, based on the above-mentioned contractual and statutory elements, was established between Ms Saez Garcia and the Fund. This relationship qualified her as a staff member of the organization.

Ms Saez Garcia's legal relationship with the Fund as a staff member is further evidenced by the facts surrounding her appeal against the decision to abolish her post, and the consequent non-renewal of her fixed-term appointment. Her appeals were initially lodged with the internal machinery established by the Fund for handling staff grievances, namely the facilitation process and the JAB, both of which were conducted in accordance with the HRPM. The memorandum of 4 April 2008 by the President of IFAD rejecting the recommendations of the JAB does not contain any indication that Ms Saez Garcia was not a staff member of the Fund. On the contrary, it is stated in the memorandum that "the non-renewal of your fixed-term contract was in accordance with Section 1.21.1 of the IFAD HRPM". There is also nothing to suggest that, in rejecting the recommendation of the JAB, the President was acting otherwise than in his capacity as the President of IFAD.

The Court then rejects three additional arguments submitted by the Fund to support its contention that Ms Saez Garcia was not a staff member of the Fund. With respect to the Fund's argument that an administrative instruction issued by IFAD in the form of a President's Bulletin on 21 January 2004 was meant "to refine and clarify the legal position of the personnel working for the Global Mechanism", and makes clear that "while Global Mechanism staff are not IFAD staff, some of IFAD's rules and regulations apply *mutatis mutandis* to Global Mechanism staff", the Court states its view that the provisions of the IFAD President's Bulletin constitute further evidence of the applicability of the staff regulations and rules of IFAD to the fixed-term contracts of Ms Saez Garcia and provide an additional indication of the existence of an employment relationship between her and the Fund. With respect to the Fund's argument that the ILOAT lacked jurisdiction because neither the COP nor the Global Mechanism has recognized its jurisdiction, the Court observes that the Tribunal did not base its jurisdiction with respect to the complaint filed by Ms Saez Garcia on such acceptance. With respect to the Fund's argument that the Tribunal did not have jurisdiction to review the decision not to renew Ms Saez Garcia's contract which was taken by the Managing Director of the Global Mechanism as he was not a staff member of IFAD, the Court considers that the status of the Managing Director has no relevance to the Tribunal's jurisdiction *ratione personae*, which depends solely on the status of Ms Saez Garcia.

In light of the above, the Court concludes that the Tribunal was competent *ratione personae* to consider the complaint brought by Ms Saez Garcia against IFAD on 8 July 2008.

3. Jurisdiction ratione materiae *of the Tribunal* (paras. 83-95)

As a staff member of the Fund, Ms Saez Garcia had the right under the HRPM to submit her complaint to the ILOAT. The Fund, however, argues that, even if it were to be assumed that the Tribunal had jurisdiction *ratione personae* over the Complainant because of her being a staff member of the Fund, the Tribunal would still not have jurisdiction *ratione materiae* over the complaint. The Fund argues that, based on the text of the Complainant's pleadings submitted to the Tribunal, it is clearly not possible to fit her complaints under the two classes of complaints set forth in Article II, paragraph 5, of the Tribunal's Statute, namely: (1) complaints alleging "non-observance, in substance or form, of the terms of appointment of officials"; and (2) complaints alleging non-observance "of provisions of the Staff Regulations". The Fund also contends that the Tribunal was not competent to entertain the Complainant's arguments as derived from the MOU, the Convention on Desertification or the COP's decisions, as these are outside the scope of Article II, paragraph 5, of the Tribunal's Statute. Ms Saez Garcia asserts that the large number of jurisdictional questions raised by the Fund in its request for an advisory opinion suggest that it is indeed going beyond the rulings on jurisdiction made by the Tribunal, to question either the manner in which the Tribunal has exercised its jurisdiction or the breadth of its considerations in hearing the complaint.

The Court reiterates that the decision impugned before the Administrative Tribunal was that of the President of IFAD contained in a memorandum to Ms Saez Garcia dated 4 April 2008 in which he rejected the recommendations of the JAB to reinstate Ms Saez Garcia. Ms Saez Garcia also challenged the decision of the Managing Director not to renew her contract, alleging that it was tainted with abuse of authority and that he was not entitled to determine the Global Mechanism's programme of work independently of the COP and of the President of IFAD. The Fund objected to the Tribunal's competence to examine these allegations since they would involve the examination by the Tribunal of the decision-making process of the Global Mechanism for which it had no jurisdiction. The Tribunal rejected these objections on the ground that "decisions of the Managing Director relating to [staff in the Global Mechanism] are, in law, decisions of the Fund".

The Court cannot agree with the arguments of the Fund that the Tribunal did not have competence to examine the decision of the Managing Director of the Global Mechanism. First, the Managing Director of the Global Mechanism was a staff member of the Fund when the decision of non-renewal of Ms Saez Garcia's contract was taken, as evidenced by his letter of appointment and the conditions of his appointment. Secondly, Ms Saez Garcia's complaint to the Tribunal falls within the category of allegations of non-observance of the "terms of appointment of an official" as specified in Article II, paragraph 5, of the Statute of the Tribunal. Thirdly, the letters of appointment and renewal of contract of Ms Saez Garcia clearly stipulate that her appointment was made in accordance with the general provisions of the IFAD Personnel Policies Manual and any amendments thereto, as well as such administrative instructions as may be issued from time to time regarding the application of the Manual. The non-observance of the provisions of these instruments, or those adopted subsequently to replace them, could be impugned before the Tribunal in accordance with Article II, paragraph 5, of its Statute, and Ms Saez Garcia did in fact allege violations of the HRPM before the Tribunal. The Court, therefore, concludes that Ms Saez Garcia's complaint to the ILOAT, following the decision of the Fund not to renew her contract, falls within the scope of allegations of non-observance of her terms of appointment and of the provisions of the staff regulations and rules of the Fund, as prescribed by Article II, paragraph 5, of the Statute of the Tribunal. Consequently, the Court is of the view that the Tribunal was competent *ratione materiae* to consider the complaint brought before it by Ms Saez Garcia in respect of the non-renewal of her contract by IFAD.

With regard to the Fund's contention that the Tribunal lacked jurisdiction to examine the provisions of the MOU and the decision-making process of the COP, as those matters are outside the scope of Article II, paragraph 5, of its Statute, the Court is of the opinion that the Tribunal could not avoid examining the legal arrangements governing the relationship between the Global Mechanism and the Fund, as well as the status and accountability of the Managing Director of the Global Mechanism. The Court states that, even if, *contrary to the* observation it has made above, *the* Global Mechanism *did have* a separate legal personality and *the* capacity to conclude contracts, the conclusions arrived at above would still be warranted, essentially on the basis of contractual documents and the provisions of the IFAD staff regulations and rules. The Court, therefore, finds, in response to the first question put to it by IFAD, that the ILOAT was competent to hear the complaint introduced against IFAD, in accordance with Article II of its Statute, in view of the fact that Ms Saez Garcia was a staff member of the Fund, and her appointment was governed by the provisions of the staff regulations and rules of the Fund.

B. Response to Questions II to VIII (paras. 96-98)

The Court, having decided to give an affirmative answer to the first question, and having concluded that the Tribunal was justified in confirming its jurisdiction, is of the view that its answer to the first question put to it by the Fund covers also all the issues on jurisdiction raised by the Fund in Questions II to VIII of its request for an advisory opinion. To the extent that Questions II to VIII seek the opinion of the Court on the reasoning underlying the conclusions reached by the Tribunal, the Court reiterates that, under the terms of Article XII of the Annex to the Statute of the ILOAT, a request for an advisory opinion is limited to a challenge of the decision of the Tribunal confirming its jurisdiction or to cases of fundamental fault of procedure. The Court has already addressed the IFAD Executive Board's challenge to the decision of the Tribunal confirming its jurisdiction. Not having a power of review with regard to the reasoning of the Tribunal or the merits of its judgments under Article XII of the Annex to the Statute of the ILOAT, the Court cannot give its opinion on those matters. As the Court observed in its 1956 Advisory Opinion, "the reasons given by the Tribunal for its decision on the merits, after it confirmed its jurisdiction, cannot properly form the basis of a challenge to the jurisdiction of the Tribunal" (*I.C.J. Reports 1956*, p. 99). With respect to the possible existence of a "fundamental fault in the procedure followed", raised in Questions II to VIII, the Court recalls that this concept was explained by the Court in its Advisory Opinion of 1973 on the *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal*, as set out above. Questions II to VIII do not identify any fundamental fault in the procedure which may have been committed by the Tribunal in its consideration of the complaint against the Fund. Thus, in the view of the Court, these questions constitute either a repetition of the question on jurisdiction, which the Court has already answered, or have an object which concerns wider issues falling outside the scope of Article XII of the Annex to the Statute of the ILOAT which was invoked by the Fund as the basis of its request for an advisory opinion.

C. Response to Question IX (para. 99)

Question IX put by the IFAD Executive Board in its request for an advisory opinion is formulated as follows: "What is the validity of the decision given by the ILOAT in its Judgment No. 2867?" The Court, having answered in the affirmative the first question of IFAD, and having therefore decided that the Tribunal was entirely justified in confirming its jurisdiction, and not having found any fundamental fault in procedure committed by the Tribunal, finds that the decision given by the ILOAT in its Judgment No. 2867 is valid.

II. Peace Palace Museum

On 17 May 1999, the Secretary-General of the United Nations, H.E. Mr. Kofi Annan, inaugurated the museum created by the International Court of Justice and situated in the south wing of the Peace Palace.

Its collection presents an overview of the theme "Peace through Justice", highlighting the history of the Hague Peace Conferences of 1899 and 1907; the creation at that time of the Permanent Court of Arbitration; the subsequent construction of the Peace Palace as a seat for international justice; as well as the establishment and the functioning of the Permanent Court of International Justice and the present Court (different displays showcase the genesis of the United Nations; the Court and its Registry; the judges on the Bench; the provenance of judges and cases; the procedure of the Court; the world's legal systems; the case law of the Court; and prominent visitors).

III. Visits and Events

A. Visits

1. Visit by the Prime Minister of the Socialist Republic of Viet Nam, H.E. Mr. Nguyen Tan Dung

On 27 September 2011, the Court was visited by the Prime Minister of the Socialist Republic of Viet Nam, H.E. Mr. Nguyen Tan Dung. The Prime Minister was accompanied, in particular, by a delegation consisting of several government ministers and the Ambassador of the Socialist Republic of Viet Nam to the Netherlands. Mr. Nguyen Tan Dung and his delegation were welcomed on their arrival by the President of the Court, Judge Hisashi Owada, and the Registrar, Mr. Philippe Couvreur. The Prime Minister and various Vietnamese officials then had discussions with the President and the Registrar in the meeting room in which the Court assembles before its public sittings. Afterwards, Mr. Nguyen Tan Dung signed the Court's Visitors' Book. A photograph of the visit is available on the Court's website under "Press Room/Multimedia/Events-related videos, photos and audio files".

2. Visit by the Mayor of The Hague, Mr. Jozias van Aartsen, and his Aldermen

On 27 September 2011, the Mayor of The Hague, Mr. Jozias van Aartsen, together with his Aldermen, paid a visit to the seat of the Court at the Peace Palace. It was the first time that the entire Municipal Executive of the City of The Hague had undertaken such a visit to an international organization. The Mayor and his Aldermen were welcomed on their arrival by the Registrar of the Court, Mr. Philippe Couvreur. They were introduced to the President, Judge Hisashi Owada, and to the other Members of the Court. During an informal lunch, Members of the Court explained how the Court functions to the municipal officials, and the latter, in turn, were able to communicate to the Judges their international ambitions for the city of The Hague. At the end of the meeting, the Mayor of The Hague signed the Court's Visitors' Book. Photographs of the visit are available on the Court's website under "Press Room/Multimedia/Events-related videos, photos and audio files".

3. Visit by the Prime Minister of the Netherlands, H.E. Mr. Mark Rutte

On 12 October 2011, the Prime Minister of the Netherlands, H.E. Mr. Mark Rutte, paid a visit to the Court. It was his first visit to the principal judicial organ of the United Nations. Mr. Rutte and his delegation were welcomed on their arrival by the President of the Court, Judge Hisashi Owada, and the Registrar, Mr. Philippe Couvreur. The Prime Minister and the members of the delegation who accompanied him were received by all the Members of the Court in the Council Room, where the Court meets before its public sittings. Afterwards, Mr. Mark Rutte signed the Court's Visitors' Book. Photographs of the visit are available on the Court's website under the "Multimedia" heading.

4. Visit by the President of the Republic of Slovenia, H.E. Mr. Danilo Türk

On 29 November 2011, the Court was visited by the President of the Republic of Slovenia, H.E. Mr. Danilo Türk. Mr. Türk and his delegation were welcomed on their arrival by the President of the Court, Judge Hisashi Owada, and the Registrar, Mr. Philippe Couvreur. The President of the Republic of Slovenia and the members of his official delegation were received for a brief discussion in the suite of the President of the Court. They then met the Members of the Court. The Slovenian President signed the Court's Visitors' Book. This was followed by a solemn sitting in the Great Hall of Justice, which was attended by members of the Diplomatic Corps and representatives of the Dutch authorities and international institutions based in The Hague. At that sitting, speeches were made by both President Owada and President Türk. The texts of the speeches delivered by the President of the Court and President Danilo Türk are attached to press release No. 2011/36. French translations are attached to the French version of the press release, which can be found on the Court's website under the "Press Room" heading. Photographs of the visit are available on the Court's website under the "Multimedia" heading.

5. Visit by H.E. Mr. Evo Morales Ayma, President of the Plurinational State of Bolivia

On 12 June 2012, H.E. Mr. Evo Morales Ayma, President of the Plurinational State of Bolivia, paid a courtesy visit to the President of the Court, Judge Peter Tomka. Mr. Morales and his delegation had a brief discussion with the President of the Court and the Registrar, Mr. Philippe Couvreur, concerning general aspects of the Court's work.

6. Other Visits

In addition, during the period under review, the President and Members of the Court, as well as the Registrar and Registry officials, welcomed a large number of dignitaries, including members of governments, diplomats, parliamentary representatives, presidents and members of judicial bodies and other senior officials, to the seat of the Court.

There were also many visits by researchers, academics, lawyers and other members of the legal profession, and journalists, among others. Presentations on the Court were made during several of these visits.

B. Events

Fourth "Open Day" at the Court

On Sunday, 18 September 2011, the Court welcomed some six hundred visitors as part of "The Hague International Day", organized in conjunction with the Municipality of The Hague, in order to introduce the expatriate community and Dutch citizens to the international organizations based in the city. This was the fourth time that the Court had taken part in this event. During the course of this "Open Day", the Information Department screened the institutional film about the Court, presented in English and in French, answered visitors' questions and distributed various information brochures.

IV. Annual *Report* and Representation of the Court at the Seat of the United Nations

During the period under review, the President of the Court, Judge Hisashi Owada, addressed representatives of the United Nations Member States assembled in New York for the 43rd plenary meeting of the Sixty-Sixth Session of the General Assembly on 26 October 2011. He was accompanied by the Registrar of the Court. President Owada presented the Court's *Annual Report* for the period 1 August 2010 to 31 July 2011 (A/66/4).

In his address, President Owada, most notably said that "the best efforts are being made by the Court to respond to the high expectations of the international community for an expeditious handling of the cases referred to the International Court of Justice".

"[G]iven a remarkable increase in the number of cases on the docket, the Court is now opining on more than a few cases on a parallel basis", the President added.

As is traditional, in his address to the General Assembly, President Owada gave an overview of the judicial activities of the Court. Over the last 12 months, the Court has rendered multiple decisions in cases which "have involved States from all regions of the world, and have raised a broad range of legal questions", he observed, before giving a synopsis of those cases in order of their entry in the Court's General List.

The President of the Court also pointed out that "[i]n the three years of [his] presidency, the docket has never contained less than 15 cases. In fact, in the last ten years, there has been an average of at least 15 cases on the docket, and sometimes as many as 28 cases".

President Owada went on to inform those present that "the substantive areas on which the Court is being asked to rule are broader in scope than ever before, with each case presenting distinct legal and factual elements". Furthermore, he added that

> "cases are frequently made up of different incidental phases, from preliminary objections to provisional measures, to requests for intervention and interpretation [and that] the Court has as a result been consistently handling cases in parallel and shortening the time between the closure of written proceedings and the opening of the oral proceedings".

"In these times of unprecedented interconnection between States and peoples, it is my sincere belief that a firm reliance on international law must underpin any and all future developments on the global stage".

President Owada declared. "The International Court of Justice, as guardian of international law, is proud to play a vital role in our increasingly globalized world", he added. In conclusion, Judge Owada stated:

> "It is my hope that Member States will continue to rely on the International Court of Justice to assist them in the pacific settlement of their disputes and that more States will accept the Court's jurisdiction, be that through a declaration under Article 36, paragraph 2, of the Statute, or through the signature of the many multilateral treaties which now contain compromissory clauses that refer disputes as to the interpretation or application of those treaties to the Court."

The full text of President Owada's speech can be found in Annex 23, p. 304 of this *Yearbook*. This text, as well as the Court's *Annual Report* for the judicial year 2010-2011, are available on the Court's website, under the heading "The Court" (click on "Presidency" and "Annual Reports").

Following the presentation of the Court's Report by its President, representatives of a number of United Nations Member States made statements before the General Assembly (in the order in which these declarations were made): Canada (also speaking on behalf of Australia and New Zealand), India, Egypt, Peru, Honduras, Senegal, Russian Federation, Switzerland, Japan, Singapore, Algeria, Colombia, Mexico, Nicaragua, Philippines, Chile, Brazil, Nigeria, Georgia and Costa Rica.

A summary of these statements can be found online (www.un.org) in the press release published by the General Assembly on 26 October 2011 (GA/11163).

On 25 October 2011, President Owada was invited to speak before the United Nations Security Council, and before the legal advisers of United Nations Member States. On 28 October 2011, he was invited to speak before the Sixth Committee of the General Assembly.

The full text of these two speeches can be found in Annexes 24 and 25, pp. 316 and 326, of this *Yearbook* and on the website of the Court under "The Court/Presidency/Statements by the President".

Following his election as President of the Court on 6 February 2012, Judge Peter Tomka made numerous speeches and official visits.

The *Annual Report* of the Court covered by this *Yearbook* (from 1 August 2011 to 31 July 2012) will be presented by President Tomka to the General Assembly on the occasion of its sixty-seventh session, in October 2012.

V. OTHER SPEECHES, CONFERENCES AND PUBLICATIONS ON THE WORK OF THE COURT

During the period under review, the President of the Court delivered numerous speeches and addresses and made a number of official visits. He most notably delivered the following speeches:

From President Owada:

"New Conflicts and the Challenge of the Protection of the Civilian Population", Keynote Address at the International Conference on State and Non-State Subjects — Ethics, Law and Politics, Pontifical Council for Justice and Peace, Vatican City (Rome), 21 October 2011; "Evolving World — Universality of International Law in a Globalizing World", *Pro-Bono* Speech at the London Muslim Centre, London (20 January 2012).

From President Tomka:

"Confronting Complexity in The Hague: The View from the Courts and Tribunals", presentation at the Annual Meeting of the American Society of International Law, Washington, D.C., 29 March 2012; Speech at the Sixty-Fourth Session of the International Law Commission, Geneva, 24 July 2012.

VI. Action Pursuant to Decisions of the Court

The present heading contains the information received in the Registry between 1 August 2011 and 31 July 2012 concerning action taken pursuant to certain decisions of the Court. The Registry, which does not take the initiative of seeking such information, publishes it without comment as and when it is received and can accept no responsibility in connection with it.

Legality of the Threat or Use of Nuclear Weapons

By a note dated 15 October 1996 the Secretary-General of the United Nations transmitted the text of the Advisory Opinion given by the Court on 8 July 1996 to the General Assembly (United Nations doc. A/ 51/218).

In December of that year, and every year since, this text has been the subject of a new General Assembly resolution, of which the full text has been reproduced in the relevant *I.C.J. Yearbook*. The history of these resolutions (1996-2011) can be found in Annex 26 (A), p. 339 of this *Yearbook*.

The latest resolution (A/RES/66/46), on the subject of this Advisory Opinion was rendered by the General Assembly during its 71st plenary meeting of its 66th session held on 2 December 2011. The General Assembly adopted the resolution by a recorded vote of 130 in favour to 26 against, with 23 abstentions (see press release GA/11182 published by the General Assembly on 2 December 2011). The full text of resolution 66/46 can be found in Annex 26 (B), p. 340 of this *Yearbook*.

VII. Applications from Private Persons

Private persons frequently apply to the Court for the purpose of obtaining a decision on matters at issue between them and the authorities of their own or of another country. These individuals are subsequently informed that, according to Article 34 of the Statute, "only States may be parties in cases before the Court".

ANNEXES

ANNEX I

Chronological Survey of Proceedings before the Court since 1947

The following list provides all of the proceedings brought before the Court since 1947. In the case of proceedings instituted by means of a special agreement the names of the parties are separated by an oblique stroke.

Title	*Dates*
(*a*) Contentious cases[1]	
Corfu Channel (*United Kingdom* v. *Albania*)	1947-1949
Fisheries (*United Kingdom* v. *Norway*)	1949-1951
Protection of French Nationals and Protected Persons in Egypt (*France* v. *Egypt*)	1949-1950
Asylum (*Colombia/Peru*)	1949-1950
Rights of Nationals of the United States of America in Morocco (*France* v. *United States of America*)	1950-1952
Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (*Colombia* v. *Peru*)	1950
Haya de la Torre (*Colombia* v. *Peru*)	1950-1951
Ambatielos (*Greece* v. *United Kingdom*)	1951-1953
Anglo-Iranian Oil Co. (*United Kingdom* v. *Iran*)	1951-1952
Minquiers and Ecrehos (*France/United Kingdom*)	1951-1953
Nottebohm (*Liechtenstein* v. *Guatemala*)	1951-1955
Monetary Gold Removed from Rome in 1943 (*Italy* v. *France, United Kingdom and United States of America*)	1953-1954
Electricité de Beyrouth Company (*France* v. *Lebanon*)	1953-1954
Treatment in Hungary of Aircraft and Crew of United States of America (*United States of America* v. *Hungary*)	1954

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[1] Although the total number of contentious cases that have been entered in the General List of the Court is 125, the present List shows only 123, the Court having joined the proceedings in a number of cases. This involved, firstly, the two *South West Africa* cases (*Ethiopia* v. *South Africa*; *Liberia* v. *South Africa*), which were entered in the General List on 4 November 1960, under separate numbers (46 and 47, respectively); these proceedings were joined by Order of the Court on 20 May 1961, the Court having found that the submissions in the Applications and Memorials filed by the Applicant Governments were *mutatis mutandis* identical and that they were accordingly in the same interest. The Court also joined the proceedings in two cases concerning the *North Sea Continental Shelf* (*Federal Republic of Germany/Denmark*; *Federal Republic of Germany/Netherlands*). These cases were entered in the General List of the Court on 20 February 1967 under separate numbers (51 and 52, respectively), but the proceedings were joined by Order of the Court on 26 April 1968, Denmark and the Netherlands having decided that their Applications were in the same interest.

Title	*Date*
Treatment in Hungary of Aircraft and Crew of United States of America (United States of America v. USSR)	1954
Aerial Incident of 10 March 1953 (United States of America v. Czechoslovakia)	1955-1956
Antarctica (United Kingdom v. Argentina)	1955-1956
Antarctica (United Kingdom v. Chile)	1955-1956
Aerial Incident of 7 October 1952 (United States of America v. USSR)	1955-1956
Certain Norwegian Loans (France v. Norway)	1955-1957
Right of Passage over Indian Territory (Portugal v. India)	1955-1960
Application of the Convention of 1902 Governing the Guardianship of Infants (Netherlands v. Sweden)	1957-1958
Interhandel (Switzerland v. United States of America)	1957-1959
Aerial Incident of 27 July 1955 (Israel v. Bulgaria)	1957-1959
Aerial Incident of 27 July 1955 (United States of America v. Bulgaria)	1957-1960
Aerial Incident of 27 July 1955 (United Kingdom v. Bulgaria)	1957-1959
Sovereignty over Certain Frontier Land (Belgium/Netherlands)	1957-1959
Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua)	1958-1960
Aerial Incident of 4 September 1954 (United States of America v. USSR)	1958
Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)	1958-1961
Compagnie du Port, des Quais et des Entrepôts de Beyrouth and Société Radio-Orient (France v. Lebanon)	1959-1960
Aerial Incident of 7 November 1954 (United States of America v. USSR)	1959
Temple of Preah Vihear (Cambodia v. Thailand)	1959-1962
South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)	1960-1966
Northern Cameroons (Cameroon v. United Kingdom)	1961-1963
Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v. Spain)	1962-1970
North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)	1967-1969
Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)	1971-1972
Fisheries Jurisdiction (United Kingdom v. Iceland)	1972-1974

Title	*Dates*
Fisheries Jurisdiction (*Federal Republic of Germany* v. *Iceland*)	1972-1974
Nuclear Tests (*Australia* v. *France*)	1973-1974
Nuclear Tests (*New Zealand* v. *France*)	1973-1974
Trial of Pakistani Prisoners of War (*Pakistan* v. *India*)	1973
Aegean Sea Continental Shelf (*Greece* v. *Turkey*)	1976-1978
Continental Shelf (*Tunisia/Libyan Arab Jamahiriya*)	1978-1982
United States Diplomatic and Consular Staff in Tehran (*United States of America* v. *Iran*)	1979-1981
Delimitation of the Maritime Boundary in the Gulf of Maine Area (*Canada/United States of America*) [case referred to a Chamber]	1981-1984
Continental Shelf (*Libyan Arab Jamahiriya/Malta*)	1982-1985
Frontier Dispute (*Burkina Faso/Republic of Mali*) [case referred to a Chamber]	1983-1986
Military and Paramilitary Activities in and against Nicaragua (*Nicaragua* v. *United States of America*)	1984-1991
Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (*Tunisia* v. *Libyan Arab Jamahiriya*)	1984-1985
Border and Transborder Armed Actions (*Nicaragua* v. *Costa Rica*)	1986-1987
Border and Transborder Armed Actions (*Nicaragua* v. *Honduras*)	1986-1992
Land, Island and Maritime Frontier Dispute (*El Salvador/Honduras: Nicaragua intervening*) [case referred to a Chamber] [the intervention of Nicaragua was admitted on 13 September 1990 (see *I.C.J. Yearbook 1990-1991*, pp. 160-174).]	1986-1992
Elettronica Sicula S.p.A. (*ELSI*) (*United States of America* v. *Italy*) [case referred to a Chamber]	1987-1989
Maritime Delimitation in the Area between Greenland and Jan Mayen (*Denmark* v. *Norway*)	1988-1993
Aerial Incident of 3 July 1988 (*Islamic Republic of Iran* v. *United States of America*)	1989-1996
Certain Phosphate Lands in Nauru (*Nauru* v. *Australia*)	1989-1993
Arbitral Award of 31 July 1989 (*Guinea-Bissau* v. *Senegal*)	1989-1991
Territorial Dispute (*Libyan Arab Jamahiriya/Chad*)	1990-1994
East Timor (*Portugal* v. *Australia*)	1991-1995
Maritime Delimitation between Guinea-Bissau and Senegal (*Guinea-Bissau* v. *Senegal*)	1991-1995
Passage through the Great Belt (*Finland* v. *Denmark*)	1991-1992
Maritime Delimitation and Territorial Questions between Qatar and Bahrain (*Qatar* v. *Bahrain*)	1991-2001

Title	*Dates*
Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. *United Kingdom)*	1992-2003
Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. *United States of America)*	1992-2003
Oil Platforms (Islamic Republic of Iran v. *United States of America)*	1992-2003
Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. *Serbia and Montenegro)*	1993-2007
Gabčíkovo-Nagymaros Project (Hungary/Slovakia)[1]	1993-
Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. *Nigeria: Equatorial Guinea intervening)* [The intervention of Equatorial Guinea was admitted on 21 October 1999 (see *I.C.J. Yearbook 1999-2000*, p. 218).]	1994-2002
Fisheries Jurisdiction (Spain v. *Canada)*	1995-1998
Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand *v.* France) *Case*	1995
Kasikili/Sedudu Island (Botswana/Namibia)	1996-1999
Vienna Convention on Consular Relations (Paraguay v. *United States of America)*	1998
Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon *v.* Nigeria), Preliminary Objections *(Nigeria* v. *Cameroon)*	1998-1999

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[1] Hearings on the merits of the case were held between 3 March and 15 April 1997, the Court paying a site visit (the first ever in its history) to the areas to which the case relates, between 1 and 4 April 1997. In its Judgment of 25 September 1997, the Court found that both Hungary and Slovakia had breached their legal obligations. It called on both States to negotiate in good faith in order to ensure the achievement of the objectives of the 1977 Budapest Treaty, which it declared was still in force, while taking account of the factual situation that had developed since 1989.

On 3 September 1998, Slovakia filed in the Registry of the Court a request for an additional judgment, arguing that such a judgment was necessary because of the unwillingness of Hungary to implement the decision delivered by the Court on 25 September 1997.

Hungary filed a written statement of its position on the request for the additional judgment made by Slovakia within the time-limit of 7 December 1998 fixed by the President of the Court. The Parties have subsequently resumed negotiations and have informed the Court on a regular basis of the progress made. The case remains pending.

Title	*Dates*
Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)	1998-2002
Ahmadou Sadio Diallo (Republic of Guinea v. *Democratic Republic of the Congo)*	1998-2012
LaGrand (Germany v. *United States of America)*	1999-2001
Legality of Use of Force (Serbia and Montenegro v. *Belgium)*	1999-2004
Legality of Use of Force (Serbia and Montenegro v. *Canada)*	1999-2004
Legality of Use of Force (Serbia and Montenegro v. *France)*	1999-2004
Legality of Use of Force (Serbia and Montenegro v. *Germany)*	1999-2004
Legality of Use of Force (Serbia and Montenegro v. *Italy)*	1999-2004
Legality of Use of Force (Serbia and Montenegro v. *Netherlands)*	1999-2004
Legality of Use of Force (Serbia and Montenegro v. *Portugal)*	1999-2004
Legality of Use of Force (Yugoslavia v. *Spain)*	1999
Legality of Use of Force (Serbia and Montenegro v. *United Kingdom)*	1999-2004
Legality of Use of Force (Yugoslavia v. *United States of America)*	1999
Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. *Burundi)*	1999-2001
Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. *Uganda)*[3]	1999-
Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. *Rwanda)*	1999-2001
Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. *Serbia)*	1999-
Aerial Incident of 10 August 1999 (Pakistan v. *India)*	1999-2000
Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. *Honduras)*	1999-2007

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[3] Public hearings on the merits of the case were held from 11 to 29 April 2005. In the Judgment which it rendered on 19 December 2005, the Court found in particular that the Parties were under obligation to one another to make reparation for the injury caused; it decided that, failing agreement between the Parties, the question of reparation would be settled by the Court. It reserved for this purpose the subsequent procedure in the case. Since then, the Parties have transmitted to the Court information concerning the negotiations they are holding to settle the question of reparation, as referred to in points (6) and (14) of the operative clause of the Judgment and paragraphs 260, 261 and 344 of the reasoning in the Judgment. The case therefore remains pending.

Title	*Dates*
Arrest Warrant of 11 April 2000 (*Democratic Republic of the Congo* v. *Belgium*)	2000-2002
Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina *v.* Yugoslavia), Preliminary Objections (*Yugoslavia* v. *Bosnia and Herzegovina*)	2001-2003
Certain Property (*Liechtenstein* v. *Germany*)	2001-2005
Territorial and Maritime Dispute (*Nicaragua* v. *Colombia*)	2001-
Frontier Dispute (*Benin/Niger*) [case referred to a Chamber]	2002-2005
Armed Activities on the Territory of the Congo (*New Application: 2002*) (*Democratic Republic of the Congo* v. *Rwanda*)	2002-2006
Application for Revision of the Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) (*El Salvador* v. *Honduras*) [case referred to a Chamber]	2002-2003
Avena and Other Mexican Nationals (*Mexico* v. *United States of America*)	2003-2004
Certain Criminal Proceedings in France (*Republic of the Congo* v. *France*)	2003-2010
Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)	2003-2008
Maritime Delimitation in the Black Sea (*Romania* v. *Ukraine*)	2004-2009
Dispute regarding Navigational and Related Rights (*Costa Rica* v. *Nicaragua*)	2005-2009
Status vis-à-vis the Host State of a Diplomatic Envoy to the United Nations (*Commonwealth of Dominica* v. *Switzerland*)	2006
Pulp Mills on the River Uruguay (*Argentina* v. *Uruguay*)	2006-2010
Certain Questions of Mutual Assistance in Criminal Matters (*Djibouti* v. *France*)	2006-2008
Maritime Dispute (*Peru* v. *Chile*)	2008-
Aerial Herbicide Spraying (*Ecuador* v. *Colombia*)	2008-
Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico *v.* United States of America) (*Mexico* v. *United States of America*)	2008-2009

Title	*Dates*
Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. *Greece)*	2008-2011
Jurisdictional Immunities of the State (Germany v. *Italy: Greece intervening)*	2008-2012
Questions relating to the Obligation to Prosecute or Extradite (Belgium v. *Senegal)*	2009-2012
Certain Questions concerning Diplomatic Relations (Honduras v. *Brazil)*	2009
Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium v. *Switzerland)*	2009-2011
Whaling in the Antarctic (Australia v. *Japan)*	2010-
Frontier Dispute (Burkina Faso/Niger)	2010-
Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. *Nicaragua)*	2010-
Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand)*	2011-
Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. *Costa Rica)*	2011-

(b) Advisory Proceedings

Title	*Dates*
Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)	1947-1948
Reparation for Injuries Suffered in the Service of the United Nations	1948-1949
Interpretation of Peace Treaties with Bulgaria, Hungary and Romania	1949-1950
Competence of the General Assembly for the Admission of a State to the United Nations	1949-1950
International Status of South West Africa	1949-1950
Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide	1950-1951
Effect of Awards of Compensation Made by the United Nations Administrative Tribunal	1953-1954
Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South West Africa	1954-1955
Judgments of the Administrative Tribunal of the ILO upon Complaints Made against Unesco	1955-1956
Admissibility of Hearings of Petitioners by the Committee on South West Africa	1955-1956

Title	*Dates*
Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization	1959-1960
Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)	1961-1962
Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)	1970-1971
Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal	1972-1973
Western Sahara	1974-1975
Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt	1980
Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal	1981-1982
Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal	1984-1987
Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947	1988
Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations	1989
Legality of the Use by a State of Nuclear Weapons in Armed Conflict	1993-1996
Legality of the Threat or Use of Nuclear Weapons	1994-1996
Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights	1998-1999
Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory	2003-2004
Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo	2008-2010
Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development	2010-2012

ANNEX 2

FORMER PRESIDENTS AND VICE-PRESIDENTS OF THE COURT

The following list contains the names of all judges who have served as President or Vice-President prior to the present holders of those offices.

1946-1949, J. G. Guerrero and J. Basdevant;
1949-1952, J. Basdevant and J. G. Guerrero[1];
1952-1955, Sir Arnold McNair and J. G. Guerrero[1];
1955-1958, G. H. Hackworth and A. H. Badawi[2];
1958-1961, H. Klaestad and Sir Muhammad Zafrulla Khan;
1961-1964, B. Winiarski and R. J. Alfaro;
1964-1967, Sir Percy Spender and V. K. Wellington Koo;
1967-1970, J. L. Bustamante y Rivero and V. M. Koretsky;
1970-1973, Sir Muhammad Zafrulla Khan and F. Ammoun[3];
1973-1976, M. Lachs and F. Ammoun[3];
1976-1979, E. Jiménez de Aréchaga and Nagendra Singh;
1979-1982, Sir Humphrey Waldock[4] and T. O. Elias[5];

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[1] While he was Vice-President of the Court, Judge Guerrero acted as President, by virtue of Article 13, paragraphs 1 and 2, of the 1946 Rules, in the following cases: *Corfu Channel (United Kingdom v. Albania)*; *Protection of French Nationals and Protected Persons in Egypt (France v. Egypt)*; *Rights of Nationals of the United States of America in Morocco (France v. United States of America)*; *Ambatielos (Greece v. United Kingdom)*; *Anglo-Iranian Oil Co. (United Kingdom v. Iran)*; *Minquiers and Ecrehos (France/United Kingdom)*; *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom and United States of America)*.

[2] While he was Vice-President of the Court, Judge Badawi acted as President, by virtue of Article 13, paragraph 1, of the 1946 Rules, in the cases concerning *Interhandel (Switzerland v. United States of America)*, *Interim Protection* and *Aerial Incident of 27 July 1955 (United States of America v. Bulgaria)*.

[3] While he was Vice-President of the Court, Judge Ammoun acted as President, by virtue of Article 11 and Article 13, paragraph 1, of the then Rules of Court, in *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, *Nuclear Tests (Australia v. France)*, *Interim Protection* and *Nuclear Tests (New Zealand v. France)*, *Interim Protection*.

[4] Sir Humphrey Waldock died on 15 August 1981. The functions of the Presidency were thereafter exercised by T. O. Elias, by virtue of Article 13, paragraph 1, and Article 14 of the 1978 Rules of Court.

[5] Vice-President Elias was for a time Acting President in *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* and in the proceedings relating to the Orders made on 20 January and 1 February 1982 in *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*.

1982-1985, T. O. Elias[6] and J. Sette-Camara;
1985-1988, Nagendra Singh and G. Ladreit de Lacharrière[7];
1988-1991, J. M. Ruda and K. Mbaye;
1991-1994, Sir Robert Jennings and S. Oda[8];
1994-1997, M. Bedjaoui and S. M. Schwebel;
1997-2000, S. M. Schwebel and C. G. Weeramantry[9];
2000-2003, G. Guillaume and Shi Jiuyong;
2003-2006, Shi Jiuyong and R. Ranjeva;
2006-2009, Dame R. Higgins[10] and A. S. Al-Khasawneh;
2009-2012, H. Owada and P. Tomka[11].

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[6] Judge Elias continued to act as President in *Continental Shelf (Libyan Arab Jamahiriya/Malta)* after 5 February 1985, by virtue of Article 32, paragraph 2, of the 1978 Rules of Court.

[7] Judge Ladreit de Lacharrière died on 10 March 1987. On 6 May 1987 the Court elected Judge Mbaye to be its Vice-President for the remainder of his predecessor's term.

[8] While he was President of the Court, Sir Robert Jennings, being a national of one of the Parties, did not, in accordance with Article 32 of the Rules of Court, preside in the case concerning *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*. Vice-President Oda exercised the functions of the Presidency in that case, as well as in the case concerning *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America)*. (See *I.C.J. Yearbook 1991-1992*, p. 198.)

[9] While he was President of the Court, Judge Schwebel, being a national of one of the Parties, did not, in accordance with Article 32 of the Rules of Court, preside in the cases concerning *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America)*, *Oil Platforms (Islamic Republic of Iran v. United States of America)*, *Vienna Convention on Consular Relations (Paraguay v. United States of America)*, *LaGrand (Germany v. United States of America)* and *Legality of Use of Force (Yugoslavia v. United States of America)*. Although Article 32 was not applicable in the cases concerning *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)* and *Legality of Use of Force (Serbia and Montenegro v. Belgium)*, *(Serbia and Montenegro v. Canada)*, *(Serbia and Montenegro v. France)*, *(Serbia and Montenegro v. Germany)*, *(Serbia and Montenegro v. Italy)*, *(Serbia and Montenegro v. Netherlands)*, *(Serbia and Montenegro v. Portugal)*, *(Yugoslavia v. Spain)*, *(Serbia and Montenegro v. United Kingdom)*, he did not think it appropriate to exercise the functions of the Presidency in those cases either. It was therefore the Vice-President, Judge Weeramantry, who, in accordance with Article 13, paragraph 1, of the Rules, exercised those functions.

[10] Prior to her election as President of the Court, Dame Higgins, referring to Article 17, paragraph 2, of the Statute, recused herself from participating in the case concerning *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*. It therefore fell upon the Vice-President, Judge Al-Khasawneh, to exercise from 6 February 2006 onwards the functions of the Presidency for the purpose of the case, in accordance with Article 13, paragraphs 1 and 2, of the Rules of Court.

[11] During his term as Vice-President of the Court, Judge Tomka acted as President, by virtue of Article 13 of the Rules of Court, in the case concerning *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* and *Whaling in the Antarctic (Australia v. Japan)*.

ANNEX 3

Former Members of the Court

The following list contains the names of all judges who have previously served as Members of the Court (the names of deceased judges are preceded by an asterisk):

	Country	*Period of Office*
* R. Ago	Italy	1979-1995
* A. Aguilar-Mawdsley	Venezuela	1991-1995
Prince B. A. Ajibola	Nigeria	1991-1994
* R. J. Alfaro	Panama	1959-1964
* A. Alvarez	Chile	1946-1955
A. S. Al-Khasawneh	Jordan	2000-2011
* F. Ammoun	Lebanon	1965-1976
* E. C. Armand-Ugon	Uruguay	1952-1961
* Ph. Azevedo	Brazil	1946-1951
* A. H. Badawi	Egypt	1946-1965
* J. Basdevant	France	1946-1964
* R. R. Baxter	United States	1979-1980
M. Bedjaoui	Algeria	1982-2001
* C. Bengzon	Philippines	1967-1976
Th. Buergenthal	United States	2000-2010
* J. L. Bustamante y Rivero	Peru	1961-1970
* L. F. Carneiro	Brazil	1951-1955
* F. de Castro	Spain	1970-1979
* R. Córdova	Mexico	1955-1964
* Ch. De Visscher	Belgium	1946-1952
* H. C. Dillard	United States	1970-1979
N. Elaraby	Egypt	2001-2006
* A. El-Erian	Egypt	1979-1981
* T. O. Elias	Nigeria	1976-1991
A. El-Khani	Syria	1981-1985
* J. Evensen	Norway	1985-1994
* I. Fabela	Mexico	1946-1952
L. Ferrari Bravo	Italy	1995-1997
* Sir Gerald Fitzmaurice	United Kingdom	1960-1973
* C.-A. Fleischhauer	Germany	1994-2003
* I. Forster	Senegal	1964-1982
* S. A. Golunsky	USSR	1952-1953
* A. Gros	France	1964-1984
* J. G. Guerrero	El Salvador	1946-1958
G. Guillaume	France	1987-2005
* G. H. Hackworth	United States	1946-1961

	Country	*Period of Office*
* G. Herczegh	Hungary	1993-2003
Dame Rosalyn Higgins	United Kingdom	1995-2009
* Hsu Mo	China	1946-1956
* L. Ignacio-Pinto	Benin	1970-1979
* Sir Robert Yewdall Jennings	United Kingdom	1982-1995
* P. C. Jessup	United States	1961-1970
* E. Jiménez de Aréchaga	Uruguay	1970-1979
* H. Klaestad	Norway	1946-1961
* F. I. Kojevnikov	USSR	1953-1961
P. H. Kooijmans	Netherlands	1997-2006
* V. M. Koretsky	USSR	1961-1970
A. G. Koroma	Sierra Leone	1994-2012
* S. B. Krylov	USSR	1946-1952
* M. Lachs	Poland	1967-1993
* G. Ladreit de Lacharrière	France	1982-1987
* Sir Hersch Lauterpacht	United Kingdom	1955-1960
* K. Mbaye	Senegal	1982-1991
* Sir Arnold McNair	United Kingdom	1946-1955
* G. Morelli	Italy	1961-1970
* L. M. Moreno Quintana	Argentina	1955-1964
* P. D. Morozov	USSR	1970-1985
* H. Mosler	Fed. Rep. of Germany	1976-1985
* Nagendra Singh	India	1973-1988
* Ni Zhengyu	China	1985-1994
S. Oda	Japan	1976-2003
* C. D. Onyeama	Nigeria	1967-1976
* L. Padilla Nervo	Mexico	1964-1973
G. Parra-Aranguren	Venezuela	1996-2009
* R. S. Pathak	India	1989-1991
* S. Petrén	Sweden	1967-1976
R. Ranjeva	Madagascar	1991-2009
* Sir Benegal Rau	India	1952-1953
* J. E. Read	Canada	1946-1958
F. Rezek	Brazil	1997-2006
* J. M. Ruda	Argentina	1973-1991
S. M. Schwebel	United States	1981-2000
* J. Sette-Camara	Brazil	1979-1988
M. Shahabuddeen	Guyana	1988-1997
Shi Jiuyong	China	1994-2010
B. Simma	Germany	2003-2012
* Sir Percy C. Spender	Australia	1958-1967
* J. Spiropoulos	Greece	1958-1967
* K. Tanaka	Japan	1961-1970
* N. K. Tarassov	Russian Federation	1985-1995

	Country	*Period of Office*
* S. Tarazi	Syria	1976-1980
V. S. Vereshchetin	Russian Federation	1995-2006
* Sir Humphrey Waldock	United Kingdom	1973-1981
C. G. Weeramantry	Sri Lanka	1991-2000
* V. K. Wellington Koo	China	1957-1967
* B. Winiarski	Poland	1946-1967
* Sir Muhammad Zafrulla Khan	Pakistan	1954-1961 and 1964-1973
* M. Zoričič	Yugoslavia	1946-1958

ANNEX 4

CASES IN WHICH JUDGES *AD HOC* HAVE BEEN APPOINTED

The following list contains, in chronological order from date of filing on the General List, the names of all cases in which judges *ad hoc* have been appointed. This list includes cases still pending (unless otherwise indicated, judges *ad hoc* held the nationality of the appointing party)[1]:

Corfu Channel (*United Kingdom* v. *Albania*). Albania chose Mr. I. Daxner (Czechoslovakia), who sat upon the Bench when the preliminary objection was heard, and Mr. B. Ečer (Czechoslovakia), who sat when the case was heard on the merits and also for the assessment of amount of compensation.

Asylum (*Colombia/Peru*), *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case* (*Colombia* v. *Peru*) and *Haya de la Torre* (*Colombia* v. *Peru*). Mr. J. J. Caicedo Castilla was chosen by Colombia and Mr. L. Alayza y Paz Soldán by Peru.

Ambatielos (*Greece* v. *United Kingdom*). Mr. J. Spiropoulos was chosen by Greece.

Anglo-Iranian Oil Co. (*United Kingdom* v. *Iran*). Mr. K. Sandjabi was chosen by Iran.

Nottebohm (*Liechtenstein* v. *Guatemala*). Mr. P. Guggenheim (Switzerland) was chosen by Liechtenstein. The Government of Guatemala had first chosen as judge *ad hoc* Mr. J. C. Herrera and subsequently Mr. J. Matos, before choosing Mr. Garcia Bauer.

Monetary Gold Removed from Rome in 1943 (*Italy* v. *France, United Kingdom and United States of America*). Mr. G. Morelli was chosen by Italy.

Right of Passage over Indian Territory (*Portugal* v. *India*). Mr. M. Fernandes was chosen by Portugal and the Hon. M. A. C. Chagla by India.

Application of the Convention of 1902 Governing the Guardianship of Infants (*Netherlands* v. *Sweden*). Mr. J. Offerhaus was chosen by the Netherlands and Mr. F. J. C. Sterzel by Sweden.

Interhandel (*Switzerland* v. *United States of America*). Mr. P. Carry was chosen by Switzerland.

Aerial Incident of 27 July 1955 (*Israel* v. *Bulgaria*). Mr. Justice Goitein was chosen by Israel and Mr. J. Zourek (Czechoslovakia) by Bulgaria.

Aerial Incident of 27 July 1955 (*United States of America* v. *Bulgaria*). Mr. J. Zourek (Czechoslovakia) was chosen by Bulgaria.

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[1] The full list of judges *ad hoc* (in alphabetical order) can be found on the Court's website under "The Court/Judges *ad hoc*".

Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. *Nicaragua).* Mr. R. Ago (Italy) was chosen by Honduras and Mr. F. Urrutia Holguín (Colombia) by Nicaragua.

Barcelona Traction, Light and Power Company, Limited (Belgium v. *Spain).* Mr. W. J. Ganshof van der Meersch was chosen by Belgium and Mr. F. de Castro by Spain. The case was removed from the List before the Court had occasion to sit.

South West Africa (Ethiopia v. *South Africa; Liberia* v. *South Africa).* The Governments of Ethiopia and Liberia had first chosen as judge *ad hoc* the Hon. J. Chesson, subsequently Sir Muhammad Zafrulla Khan (Pakistan) and then Sir Adetokunboh A. Ademola (Nigeria), before choosing Sir Louis Mbanefo (Nigeria). South Africa chose the Hon. J. T. van Wyk.

Northern Cameroons (Cameroon v. *United Kingdom).* Mr. P. Beb a Don was chosen by Cameroon.

Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v. *Spain).* Belgium chose Mr. W. J. Ganshof van der Meersch, who sat upon the Bench when the preliminary objections were heard, and Mr. W. Riphagen (Netherlands), who sat in the second phase. Spain chose Mr. E. C. Armand-Ugon (Uruguay).

North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands). Mr. H. Mosler was chosen by the Federal Republic of Germany and Mr. M. Sørensen (Denmark) by Denmark and the Netherlands.

Appeal Relating to the Jurisdiction of the ICAO Council (India v. *Pakistan).* Mr. Nagendra Singh was chosen by India.

Nuclear Tests (Australia v. *France).* Sir Garfield Barwick was chosen by Australia.

Nuclear Tests (New Zealand v. *France).* Sir Garfield Barwick (Australia) was chosen by New Zealand.

Trial of Pakistani Prisoners of War (Pakistan v. *India).* Pakistan chose Sir Muhammad Zafrulla Khan, who sat in the proceedings on the request for interim measures up to 2 July 1973, and Mr. Muhammad Yaqub Ali Khan. This case was removed from the List before the Court had occasion to hear argument on the question of its jurisdiction.

Western Sahara. Mr. A. Boni (Ivory Coast) was chosen by Morocco.

Aegean Sea Continental Shelf (Greece v. *Turkey).* Mr. M. Stassinopoulos was chosen by Greece.

Continental Shelf (Tunisia/Libyan Arab Jamahiriya). Mr. E. Jiménez de Aréchaga (Uruguay) was chosen by the Libyan Arab Jamahiriya and Mr. J. Evensen (Norway) by Tunisia.

Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America) (case referred to a Chamber). Mr. M. Cohen was chosen by Canada.

Continental Shelf (Libyan Arab Jamahiriya/Malta). Mr. E. Jiménez de Aréchaga (Uruguay) was chosen by the Libyan Arab Jamahiriya.

Mr. J. Castañeda (Mexico) was chosen by Malta and sat in the proceedings culminating in the Judgment on Italy's Application for permission to intervene. Mr. N. Valticos (Greece) was chosen by Malta to sit when the case was heard on the merits.

Frontier Dispute (Burkina Faso/Republic of Mali) (case referred to a Chamber). Mr. F. Luchaire (France) was chosen by Burkina Faso and Mr. G. Abi-Saab (Egypt) by the Republic of Mali.

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. *United States of America)*. Mr. C.-A. Colliard (France) was chosen by Nicaragua.

Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia* v. *Libyan Arab Jamahiriya)*. Mrs. S. Bastid (France) was chosen by Tunisia and Mr. E. Jiménez de Aréchaga (Uruguay) by the Libyan Arab Jamahiriya.

Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) (case referred to a Chamber). Mr. N. Valticos (Greece) was chosen by El Salvador and Mr. M. Virally (France) was chosen by Honduras. Following the death of Mr. Virally, Mr. S. Torres Bernárdez (Spain) was chosen by Honduras.

Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. *Norway)*. Mr. P. H. Fischer was chosen by Denmark.

Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. *United States of America)*. Mr. M. Aghahosseini was chosen by the Islamic Republic of Iran. The case was removed from the List before the Court had occasion to hear argument on the preliminary objections raised by the United States.

Arbitral Award of 31 July 1989 (Guinea-Bissau v. *Senegal)*. Mr. H. Thierry (France) was chosen by Guinea-Bissau. Following the expiry of Judge Mbaye's term of office on 5 February 1991, Senegal no longer had a judge of its nationality on the Bench. It therefore chose Mr. K. Mbaye to sit as judge *ad hoc*.

Territorial Dispute (Libyan Arab Jamahiriya/Chad). Mr. J. Sette-Camara (Brazil) was chosen by the Libyan Arab Jamahiriya and Mr. G. M. Abi-Saab (Egypt) by Chad.

East Timor (Portugal v. *Australia)*. Mr. A. de Arruda Ferrer-Correia was chosen by Portugal. Following his resignation, on 14 July 1994, Mr. K. J. Skubiszewski (Poland) was chosen by Portugal. Sir Ninian Stephen was chosen by Australia.

Passage through the Great Belt (Finland v. *Denmark)*. Mr. B. Broms was chosen by Finland and Mr. P. H. Fischer by Denmark.

Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. *Bahrain)*. Mr. J. M. Ruda (Argentina) was chosen by Qatar. Following the death of Mr. Ruda, Mr. S. Torres Bernárdez (Spain) was chosen by Qatar. Mr. N. Valticos (Greece) was chosen by Bahrain. He resigned for health reasons as from the end of the jurisdiction and admissibility phase of the case. Bahrain subsequently chose Mr. M. Shahabuddeen (Guyana). After the resignation of Mr. Shahabuddeen, Bahrain chose Mr. Yves L. Fortier (Canada) to sit as judge *ad hoc*.

Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (*Libyan Arab Jamahiriya* v. *United Kingdom*). Mr. A. S. El-Kosheri (Egypt) was chosen by the Libyan Arab Jamahiriya. Dame Rosalyn Higgins having recused herself, the United Kingdom chose Sir Robert Jennings to sit as judge *ad hoc*. The latter has been sitting as such in the phase of the proceedings concerning jurisdiction and admissibility.

Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (*Libyan Arab Jamahiriya* v. *United States of America*). Mr. A. S. El-Kosheri (Egypt) was chosen by the Libyan Arab Jamahiriya.

Oil Platforms (*Islamic Republic of Iran* v. *United States of America*). Mr. F. Rigaux (Belgium) was chosen by the Islamic Republic of Iran.

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina* v. *Serbia and Montenegro*). Sir Elihu Lauterpacht (United Kingdom) was chosen by Bosnia and Herzegovina. Following his resignation, on 22 February 2002, Mr. Ahmed Mahiou (Algeria) was chosen by Bosnia and Herzegovina. Mr. M. Kreća was chosen by Serbia and Montenegro.

Gabčíkovo-Nagymaros Project (*Hungary/Slovakia*). H.E. K. J. Skubiszewski (Poland) was chosen by Slovakia. Professor Skubiszewski, President of the Iran/US Claims Tribunal and judge *ad hoc* at the Court died on 8 February 2010, while the case was still pending.

Land and Maritime Boundary between Cameroon and Nigeria (*Cameroon* v. *Nigeria: Equatorial Guinea intervening*). Mr. K. Mbaye (Senegal) was chosen by Cameroon and Prince B. A. Ajibola by Nigeria.

Fisheries Jurisdiction (*Spain* v. *Canada*). Mr. S. Torres Bernárdez was chosen by Spain and Mr. M. Lalonde by Canada.

Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand *v.* France) *Case*. Sir Geoffrey Palmer was chosen by New Zealand.

Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon *v.* Nigeria), Preliminary Objections (*Nigeria* v. *Cameroon*). Prince B. A. Ajibola was chosen by Nigeria and Mr. K. Mbaye (Senegal) by Cameroon.

Sovereignty over Pulau Ligitan and Pulau Sipadan (*Indonesia/Malaysia*). Mr. M. Shahabuddeen (Guyana) was chosen by Indonesia. Following the resignation of Mr. Shahabuddeen, Mr. Thomas Franck (United States of America) was chosen by Indonesia. Mr. C. G. Weeramantry (Sri Lanka) was chosen by Malaysia.

Ahmadou Sadio Diallo (Republic of Guinea v. *Democratic Republic of the Congo).* Mr. Mohammed Bedjaoui (Algeria) was chosen by the Republic of Guinea and Mr. Auguste Mampuya Kanunk'A-Tshiabo by the Democratic Republic of the Congo. Following the resignation of Mr. Bedjaoui, on 10 September 2002, Mr. Ahmed Mahiou (Algeria) was chosen by the Republic of Guinea.

Legality of Use of Force (Serbia and Montenegro v. *Belgium) (Serbia and Montenegro* v. *Canada) (Serbia and Montenegro* v. *France) (Serbia and Montenegro* v. *Germany) (Serbia and Montenegro* v. *Italy) (Serbia and Montenegro* v. *Netherlands) (Serbia and Montenegro* v. *Portugal) (Yugoslavia* v. *Spain) (Serbia and Montenegro* v. *United Kingdom) (Yugoslavia* v. *United States of America).* In all ten cases Serbia and Montenegro [Yugoslavia] chose Mr. M. Kreća; in the case of *Serbia and Montenegro* v. *Belgium*, Mr. P. Duinslaeger was chosen by Belgium; in the case of *Serbia and Montenegro* v. *Canada*, Mr. M. Lalonde was chosen by Canada; in the case of *Serbia and Montenegro* v. *Italy*, Mr. G. Gaja was chosen by Italy and in the case of *Yugoslavia* v. *Spain*, Mr. S. Torres Bernárdez was chosen by Spain. These have been sitting as such during the examination of Serbia and Montenegro's requests for the indication of provisional measures. In March 2000 Portugal indicated its intention to appoint a judge *ad hoc*. With regard to the phase of the procedure concerning the preliminary objections, the Court, taking into account the presence upon the Bench of judges of British, Dutch and French nationality, decided that the judges *ad hoc* chosen by the respondent States should not sit during that phase. The Court observed that this decision did not in any way prejudice the question whether, if the Court should reject the preliminary objections of the respondents, judges *ad hoc* might sit in subsequent stages of the cases.

Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. *Burundi) (Democratic Republic of the Congo* v. *Uganda) (Democratic Republic of the Congo* v. *Rwanda).* In all three cases Mr. Joe Verhoeven (Belgium) was chosen by the Democratic Republic of the Congo; in the case of *Democratic Republic of the Congo* v. *Burundi*, Mr. J. J. A. Salmon (Belgium) was chosen by Burundi; in the case of *Democratic Republic of the Congo* v. *Uganda*, Mr. James L. Kateka (Tanzania) was chosen by Uganda; and, in the case of *Democratic Republic of the Congo* v. *Rwanda*, Mr. C. J. R. Dugard (South Africa) was chosen by Rwanda.

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. *Serbia).* Mr. B. Vukas was chosen by Croatia and Mr. M. Kreća by Serbia.

Aerial Incident of 10 August 1999 (Pakistan v. *India).* Mr. S. S. U. Pirzada was chosen by Pakistan and Mr. B. P. J. Reddy by India.

Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. *Honduras).* Mr. Giorgio Gaja (Italy) was chosen by Nicaragua and Mr. Julio González Campos (Spain) by Honduras. Following the resignation of Mr. González Campos, Honduras chose Santiago Torres Bernárdez.

Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. *Belgium).* Mr. Sayeman Bula-Bula was chosen by the Democratic Republic of the Congo and Mrs. Christine Van den Wyngaert by Belgium.

Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina *v.* Yugoslavia), Preliminary Objections *(Yugoslavia* v. *Bosnia and Herzegovina).* Mr. Vojin Dimitrijević was chosen by Yugoslavia. Mr. Sead Hodžić was chosen by Bosnia and Herzegovina. Following the resignation of Mr. Hodžić, on 9 April 2002, Bosnia and Herzegovina chose Mr. Ahmed Mahiou (Algeria).

Certain Property (Liechtenstein v. *Germany).* Mr. Ian Brownlie (United Kingdom) was chosen by Liechtenstein. Following his resignation, on 25 April 2002, Sir Franklin Berman (United Kingdom) was chosen by Liechtenstein. Mr. Carl-August Fleischhauer was chosen by Germany, Judge Simma being disqualified from sitting.

Territorial and Maritime Dispute (Nicaragua v. *Colombia).* Nicaragua chose Mohammed Bedjaoui. Following the latter's resignation, it chose Giorgio Gaja. Following Mr. Gaja's election as a Member of the Court, it chose Thomas A. Mensah[3]. In view of Nicaragua's choice, Colombia chose Yves L. Fortier. Following the latter's resignation, it chose Jean-Pierre Cot.

Frontier Dispute (Benin/Niger). Mr. Mohamed Bennouna (Morocco) was chosen by Benin and Mr. Mohammed Bedjaoui (Algeria) by Niger.

Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. *Rwanda).* Mr. Jean-Pierre Mavungu Mvumbi-di-Ngoma was chosen by the Democratic Republic of the Congo and Mr. John Dugard (South Africa) by Rwanda.

Application for Revision of the Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) *(El Salvador* v. *Honduras).* Mr. Felipe H. Paolillo (Uruguay) was chosen by El Salvador and Mr. Santiago Torres Bernárdez (Spain) by Honduras.

Avena and Other Mexican Nationals (Mexico v. *United States of America).* Mr. Bernardo Sepúlveda-Amor was chosen by Mexico.

Certain Criminal Proceedings in France (Republic of the Congo v. *France).* Mr. Jean-Yves De Cara (France) was chosen by the Republic of the Congo. Judge Abraham having recused himself under Article 24 of the Statute of the Court, Mr. Gilbert Guillaume was chosen by France.

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[3] In view of Nicaragua's choice, Judge Gaja decided that it would be inappropriate for him to sit in the case.

Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore). Mr. Christopher J. Dugard (South Africa) was chosen by Malaysia and Mr. P. Sreenivasa Rao (India) by Singapore.

Maritime Delimitation in the Black Sea (Romania v. *Ukraine).* Mr. Jean-Pierre Cot (France) was chosen by Romania and Mr. Bernard H. Oxman (United States) by Ukraine.

Dispute regarding Navigational and Related Rights (Costa Rica v. *Nicaragua).* Mr. Antônio Augusto Cançado Trindade (Brazil) was chosen as judge *ad hoc* by Costa Rica. Mr. Cançado Trindade was later elected as a Member of the Court, as of 6 February 2009. He continued to sit on that case until its conclusion on 13 July 2009. Mr. Gilbert Guillaume (France) was chosen by Nicaragua.

Pulp Mills on the River Uruguay (Argentina v. *Uruguay).* Mr. Raúl Emilio Vinuesa was chosen by Argentina and Mr. Santiago Torres Bernárdez (Spain) by Uruguay.

Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. *France).* Mr. Abdulqawi Ahmed Yusuf (Somalia) was chosen by Djibouti. Judge Abraham having recused himself under Article 24 of the Statute of the Court, Mr. Gilbert Guillaume was chosen by France.

Maritime Dispute (Peru v. *Chile).* Mr. Gilbert Guillaume (France) was chosen by Peru. Mr. Francisco Orrego Vicuña was chosen by Chile.

Aerial Herbicide Spraying (Ecuador v. *Colombia).* Mr. Raúl Emilio Vinuesa (Argentina) was chosen by Ecuador. Mr. Jean-Pierre Cot (France) was chosen by Colombia.

Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. *Russian Federation).* Mr. Giorgio Gaja (Italy) was chosen by Georgia.

Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. *Greece).* Mr. Budislav Vukas (Croatia) was chosen by Macedonia and Mr. Emmanuel Roucounas was chosen by Greece.

Jurisdictional Immunities of the State (Germany v. *Italy: Greece intervening).* Mr. Giorgio Gaja was chosen by Italy.

Questions relating to the Obligation to Prosecute or Extradite (Belgium v. *Senegal).* Mr. Philippe Kirsch (Belgium/Canada) was chosen by Belgium and Mr. Serge Sur (France) was chosen by Senegal.

Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium v. *Switzerland).* Mr. Fausto Pocar (Italy) was chosen by Belgium and Mr. Andreas Bucher was chosen by Switzerland.

Whaling in the Antarctic (Australia v. *Japan).* Ms Hilary Charlesworth was chosen by Australia.

Frontier Dispute (Burkina Faso/Niger). Burkina Faso chose Mr. Jean-Pierre Cot. Following the latter's resignation, Burkina Faso chose Yves Daudet. Niger chose Mr. Ahmed Mahiou.

Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua). Costa Rica chose Mr. John Dugard (South Africa) and Nicaragua chose Mr. Gilbert Guillaume (France).

Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia v. Thailand).* Cambodia chose Mr. Gilbert Guillaume (France) and Thailand chose Mr. Jean-Pierre Cot (France).

Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica). Nicaragua chose Gilbert Guillaume and Costa Rica Bruno Simma.

ANNEX 5

Chambers Formed under Article 26, Paragraph 2, of the Statute

The Statute (Art. 26, para. 2) provides that the Court may form a chamber to deal with a particular case, the number of judges constituting such a chamber being determined by the Court with the approval of the parties. The following list includes the six cases in which chambers of this kind have been formed at the joint request of the parties. The case title, members of each chamber and the dates that the chambers were dissolved are given below.

Delimitation of the Maritime Boundary in the Gulf of Maine Area (*Canada/United States of America*): constituted on 20 January 1982: *Judges* Ago (*President*), Gros, Mosler, Schwebel; *Judge* ad hoc Cohen. The judgment on the merits was rendered on 12 October 1984, after which the Chamber formed to hear that case was dissolved.

Frontier Dispute (*Burkina Faso/Republic of Mali*): constituted on 3 April 1985; *Judges* Bedjaoui (*President*), Lachs, Ruda; *Judges* ad hoc Luchaire, Abi-Saab. The judgment on the merits was rendered on 22 December 1986, after which the Chamber formed to hear that case was dissolved.

Elettronica Sicula S.p.A. (*ELSI*) (*United States of America* v. *Italy*): constituted on 2 March 1987 with the following composition — *Judges* Nagendra Singh (*President*), Oda, Ago, Schwebel, Sir Robert Jennings. Following the death of Judge Nagendra Singh, the Court, on 20 December 1988, elected President Ruda to succeed him as member and (ex officio) President of the Chamber. The judgment on the merits was rendered on 20 July 1989, after which the Chamber formed to hear that case was dissolved.

Land, Island and Maritime Frontier Dispute (*El Salvador/Honduras: Nicaragua intervening*) [as from 13 September 1990]: constituted on 8 May 1987 with the following composition — *Judges* Oda, Sette-Camara, Sir Robert Jennings; *Judges* ad hoc Valticos, Virally. The Chamber elected Judge Sette-Camara to be its President. After the death of Judge Virally, Mr. Torres Bernárdez was chosen to sit as judge *ad hoc* in his place, and on 13 December 1989 the Court declared the Chamber to be composed as follows: *Judges* Sette-Camara (*President*), Oda, Sir Robert Jennings; *Judges* ad hoc Valticos, Torres Bernárdez. On 7 February 1991 Judges Sir Robert Jennings and Oda exchanged places in the order of precedence within the Chamber owing to their election to be, respectively, the Court's President and Vice-President. The judgment on the merits was rendered on 11 September 1992, after which the Chamber formed to hear that case was dissolved.

Frontier Dispute (Benin/Niger): constituted on 27 November 2002 with the following composition — *Judges* Guillaume *(President)*, Ranjeva, Kooijmans; *Judges* ad hoc Bedjaoui, Bennouna. Following an election held on 16 February 2005 to fill the vacancy left by the resignation of Judge Guillaume, the composition of that Chamber was as follows: *Judges* Ranjeva *(President)*, Kooijmans, Abraham; *Judges* ad hoc Bedjaoui, Bennouna. The judgment on the merits was rendered on 12 July 2005, after which the Chamber formed to hear that case was dissolved.

Application for Revision of the Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) *(El Salvador* v. *Honduras)*: constituted on 27 November 2002 with the following composition — *Judges* Guillaume *(President)*, Rezek, Buergenthal; *Judges* ad hoc Torres Bernárdez, Paolillo. The judgment on the admissibility of the Application filed by El Salvador was rendered on 18 December 2003, after which the Chamber formed to hear that case was dissolved.

ANNEX 6

Cases Submitted by Special Agreement

The following cases were submitted by means of special agreement:

- *Asylum (Colombia/Peru)*;
- *Minquiers and Ecrehos (France/United Kingdom)*;
- *Sovereignty over Certain Frontier Land (Belgium/Netherlands)*;
- *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*;
- *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*;
- *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)* (case referred to a Chamber);
- *Continental Shelf (Libyan Arab Jamahiriya/Malta)*;
- *Frontier Dispute (Burkina Faso/Republic of Mali)* (case referred to a Chamber);
- *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* (case referred to a Chamber);
- *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*;
- *Gabčikovo-Nagymaros Project (Hungary/Slovakia)*;
- *Kasikili/Sedudu Island (Botswana/Namibia)*;
- *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*;
- *Frontier Dispute (Benin/Niger)*;
- *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*;
- *Frontier Dispute (Burkina Faso/Niger)*.

It should be noted that in the *Corfu Channel (United Kingdom* v. *Albania)* case the Parties made a special agreement after delivery of the Judgment on the preliminary objection, and that the case concerning the *Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras* v. *Nicaragua)* was submitted by means of an Application, but the Parties had previously concluded an agreement on the procedure to be followed in submitting the dispute to the Court.

ANNEX 7 (A)

QUESTIONS OF CONSENT: PRIOR TO THE INTRODUCTION OF ARTICLE 38, PARAGRAPH 5

Cases which the Court found it could take no further steps upon an Application in which it was admitted that the opposing party did not accept its jurisdiction (prior to the present Rules of Court coming into force on 1 July 1978, when Article 38, paragraph 5, was introduced):

— *Treatment in Hungary of Aircraft and Crew of United States of America* (*United States of America* v. *Hungary*) (*United States of America* v. *USSR*);
— *Aerial Incident of 10 March 1953* (*United States of America* v. *Czechoslovakia*);
— *Antarctica* (*United Kingdom* v. *Argentina*) (*United Kingdom* v. *Chile*);
— *Aerial Incident of 7 October 1952* (*United States of America* v. *USSR*);
— *Aerial Incident of 4 September 1954* (*United States of America* v. *USSR*);
— *Aerial Incident of 7 November 1954* (*United States of America* v. *USSR*).

ANNEX 7 (B)

QUESTIONS OF CONSENT: AFTER THE INTRODUCTION OF ARTICLE 38, PARAGRAPH 5

In the following nine Applications, the provisions of Article 38, paragraph 5, were invoked by the Applicant, but the jurisdiction of the Court was not accepted by the Respondent:

- An Application filed by Hungary on 23 October 1992, instituting proceedings against the Czech and Slovak Republic, but no action was taken, the party against which the Application was filed having not consented to the Court's jurisdiction;
- An Application filed by the Federal Republic of Yugoslavia on 16 March 1994, instituting proceedings against the Member States of NATO, but no action was taken, the party against which the Application was filed having not consented to the Court's jurisdiction;
- In the cases concerning *Legality of Use of Force (Serbia and Montenegro v. France) (Serbia and Montenegro v. Germany) (Serbia and Montenegro v. Italy) (Serbia and Montenegro v. United States of America)*, Serbia and Montenegro (formerly called Yugoslavia) referred to Article IX of the Genocide Convention and to Article 38, paragraph 5, of the Rules of Court as bases for the jurisdiction of the Court. The cases were entered in the General List on the basis of the reference to Article IX of the Genocide Convention. No action was taken, the party against which the action was filed having not consented to the Court's jurisdiction;
- An Application filed by Eritrea on 16 February 1999, instituting proceedings against Ethiopia, but no action was taken, the party against which the Application was filed having not consented to the Court's jurisdiction;
- An Application filed by Liberia on 4 August 2003 instituting proceedings against Sierra Leone, but no action was taken, the party against which the Application was filed having not consented to the Court's jurisdiction;
- An Application filed by the Republic of Rwanda on 18 April 2007, instituting proceedings against France. As far as this Application is concerned, in accordance with Article 38, paragraph 5, of the Rules of Court, the Application by the Republic of Rwanda, to which was appended a request for the indication of provisional measures, was transmitted to the French Government. However, no action was taken in the proceedings as France did not consent to the Court's jurisdiction in the case.

ANNEX 8

ACCEPTANCE OF THE COURT'S JURISDICTION IN VIRTUE OF THE RULE OF *FORUM PROROGATUM*

In the following two Applications, the provisions of Article 38, paragraph 5, were invoked by the Applicant and accepted by the Respondent (the Court thus had jurisdiction as of the date of acceptance in virtue of the rule of *forum prorogatum*):

- An Application filed by the Republic of the Congo on 9 December 2002, instituting proceedings against France. As far as this Application is concerned, the Respondent consented to the Court's jurisdiction on 11 April 2003. That consent led to the case being entered into the General List with effect from the date of receipt of the consent as *Certain Criminal Proceedings (Republic of the Congo* v. *France)*;
- An Application filed by the Republic of Djibouti on 10 January 2006, instituting proceedings against France. As far as this Application is concerned, the Respondent consented to the Court's jurisdiction on 9 August 2006. That consent led to the case being entered into the General List with effect from the date of receipt of the consent as *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti* v. *France)*.

ANNEX 9

REQUESTS FOR INTERPRETATION

Requests for interpretation of judgments of the Court were made on the following five occasions:

— By Colombia in respect of the Judgment delivered by the Court on 20 November 1950 in the *Asylum (Colombia/Peru)* case;

— By Tunisia (along with an Application for revision) in respect of the Judgment delivered by the Court on 24 February 1982 in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*;

— By Nigeria in respect of the Court's Judgment on preliminary objections of 11 June 1998 in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria)*;

— By Mexico in respect of the Judgment delivered by the Court on 31 March 2004 in the case concerning *Avena and Other Mexican Nationals (Mexico* v. *United States of America)*;

— By Cambodia in respect of the Judgment delivered by the Court on 15 June 1962 in the case concerning *Temple of Preah Vihear (Cambodia* v. *Thailand)*.

ANNEX 10

APPLICATIONS FOR REVISION

Applications for the revision of Judgments of the Court were made on the following three occasions:

- An Application for revision (along with a request for interpretation) of the Judgment of 24 February 1982 in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* was filed by Tunisia;
- An Application for revision of the Court's Judgment on preliminary objections of 11 July 1996 in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia)* was filed by Yugoslavia;
- An Application for revision of the Judgment of 11 September 1992 in the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* was filed by El Salvador.

ANNEX 11

ADVISORY OPINIONS

The following fifteen Advisory Opinions were requested by the General Assembly:

- — *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*;
- — *Reparation for Injuries Suffered in the Service of the United Nations*;
- — *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase*; ibid., *Second Phase*;
- — *Competence of the General Assembly for the Admission of a State to the United Nations*;
- — *International Status of South West Africa*;
- — *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*;
- — *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*;
- — *Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South West Africa*;
- — *Admissibility of Hearings of Petitioners by the Committee on South West Africa*;
- — *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)*;
- — *Western Sahara*;
- — *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*;
- — *Legality of the Threat or Use of Nuclear Weapons*;
- — *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*;
- — *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*.

ANNEX 12

INSTRUCTIONS FOR THE REGISTRY (SINCE 1946) AND STAFF REGULATIONS FOR THE REGISTRY (SINCE 1947)

Staff members of the Registry are subject to Instructions for the Registry and Staff Regulations for the Registry.

The Instructions for the Registry, established by the Registry and approved by the Court in October 1946, were amended in March 1947 and again in September 1949. The Court adopted a revised version of the Instructions in March 2012.

According to Article 28, paragraph 4, of the Rules of Court, the Staff Regulations, established by the Registry and approved by the Court, must be "so far as possible in conformity with the United Nations Staff Regulations and Staff Rules".

Before 1979, staff members of the Registry were subject to Staff Regulations adopted by the President and approved by the Court in March 1947 in accordance with Article 18, paragraph 2, of the 1946 Rules of Court; these Staff Regulations were amended in February and March 1950 and in June 1951. On 7 March 1979 the Court adopted new Staff Regulations for the Registry. These Staff Regulations were amended in November 1987, July 1996, April 1997, December 2000, September 2002, May 2006, July 2009, March 2011 and March 2012.

The text of the Instructions for the Registry and the Staff Regulations for the Registry can be found on the website of the Court (www.icj-cij.org) under "Registry".

ANNEX 13

FORMER REGISTRARS AND DEPUTY-REGISTRARS OF THE COURT

Former Registrars of the Court:

— E. Hambro (1946-1953).
— J. López-Oliván (1953-1960).
— J. Garnier-Coignet (1960-1966).
— S. Aquarone (1966-1980).
— S. Torres Bernárdez (1980-1986).
— E. Valencia-Ospina (1987-2000).

Former Deputy-Registrars of the Court:

— J. Garnier-Coignet (1946-1960).
— S. Aquarone (1960-1966).
— W. Tait (1966-1976).
— A. Pillepich (1977-1984).
— E. Valencia-Ospina (1984-1987).
— B. Noble (1987-1994).
— J. J. Arnaldez (1994-2008).

ANNEX 14

Approved Budget for the Biennium 2012-2013

Approved budget (initial appropriation) for the biennium 2012-2013 (United States dollars):

Programme		
Members of the Court		
0311025	Allowances for various expenses	1,130,700
0311023	Pensions[1]	3,866,600
0393909	Duty allowance: judges *ad hoc*	1,238,500
2042302	Travel on official business	53,100
0393902	Emoluments	7,857,600
Subtotal		**14,146,500**
Registry		
0110000	Established posts	17,590,800
0170000	Temporary posts for the biennium	200,100
0200000	Common staff costs	6,679,600
1540000	(Medical and associated costs, after suspension of services)	319,200
0211014	Representation allowance	7,200
1210000	Temporary assistance for meetings	1,514,300
1310000	General temporary assistance	265,600
1410000	Consultants	159,200
1510000	Overtime	102,200
2042302	Official travel	49,600
0454501	Hospitality	20,600
Subtotal		**26,908,400**

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[1] This amount includes $410,000 for payment of pensions, travel and removal expenses of judges who retired during the current biennium, and travel and removal expenses, as well as installation grants of new Members of the Court, in accordance with the Resolution for Unforeseen Expenses approved by General Assembly resolution 64/246 of 24 December 2009.

Programme		
Programme Support		
3030000	External translation	448,000
3050000	Printing	637,800
3070000	Data-processing services	673,400
4010000	Rental/maintenance of premises	3,389,900
4030000	Rental of furniture and equipment	247,800
4040000	Communications	211,800
4060000	Maintenance of furniture and equipment	112,400
4090000	Miscellaneous services	49,100
5000000	Supplies and materials	278,500
5030000	Library books and supplies	245,000
6000000	Furniture and equipment	201,800
6025041	Acquisition of office automation equipment	80,300
6025042	Replacement of office automation equipment	135,700
Subtotal		**6,711,500**
Total		**47,766,400**

ANNEX 15

WITNESSES AND EXPERTS

Witnesses and/or experts have been called in the following 10 cases:

- *Corfu Channel (United Kingdom* v. *Albania)* where the Court heard witnesses and experts presented by each of the Parties, appointed experts by Order and prescribed an enquiry on the spot;
- *Temple of Preah Vihear (Cambodia* v. *Thailand)* where the Court heard witnesses and experts presented by each of the Parties;
- *South West Africa (Ethiopia* v. *South Africa; Liberia* v. *South Africa)* where the Court heard witnesses and experts presented by one Party;
- *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* where the Court heard an expert presented by one Party;
- *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)* where the Chamber constituted heard an expert presented by one Party and itself appointed, by Order, at the request of the Parties and in accordance with the Special Agreement concluded between them, a technical expert to assist it in its work;
- *Continental Shelf (Libyan Arab Jamahiriya/Malta)* where the Court heard experts presented by each of the Parties;
- *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)* where the Court heard witnesses presented by one Party;
- *Elettronica Sicula S.p.A. (ELSI) (United States of America* v. *Italy)* where the Chamber constituted heard witnesses presented by one of the Parties and experts presented by each of them;
- *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* where the Court heard a witness presented by one Party;
- *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)* where the Court heard witnesses, experts and witness-experts presented by both Parties.

ANNEX 16

PROVISIONAL MEASURES

Provisional measures have been requested in the following cases:

- *Anglo-Iranian Oil Co.* (*United Kingdom* v. *Iran*);
- *Interhandel* (*Switzerland* v. *United States of America*);
- *Fisheries Jurisdiction* (*United Kingdom* v. *Iceland*) (*Federal Republic of Germany* v. *Iceland*);
- *Nuclear Tests* (*Australia* v. *France*) (*New Zealand* v. *France*);
- *Trial of Pakistani Prisoners of War* (*Pakistan* v. *India*);
- *Aegean Sea Continental Shelf* (*Greece* v. *Turkey*);
- *United States Diplomatic and Consular Staff in Tehran* (*United States of America* v. *Iran*);
- *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua* v. *United States of America*);
- *Frontier Dispute* (*Burkina Faso/Republic of Mali*) (case referred to a Chamber);
- *Border and Transborder Armed Actions* (*Nicaragua* v. *Honduras*) (in this case the request was withdrawn);
- *Arbitral Award of 31 July 1989* (*Guinea-Bissau* v. *Senegal*);
- *Passage through the Great Belt* (*Finland* v. *Denmark*);
- *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie* (*Libyan Arab Jamahiriya* v. *United Kingdom*) (*Libyan Arab Jamahiriya* v. *United States of America*);
- *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina* v. *Serbia and Montenegro*) (in this case two requests were made by Bosnia and Herzegovina and one by Serbia and Montenegro);
- *Land and Maritime Boundary between Cameroon and Nigeria* (*Cameroon* v. *Nigeria*);
- *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the* Nuclear Tests (New Zealand *v.* France) *Case*;
- *Vienna Convention on Consular Relations* (*Paraguay* v. *United States of America*);
- *LaGrand* (*Germany* v. *United States of America*);
- *Legality of Use of Force* (*Serbia and Montenegro* v. *Belgium*) (*Serbia and Montenegro* v. *Canada*) (*Serbia and Montenegro* v. *France*) (*Serbia and Montenegro* v. *Germany*) (*Serbia and Montenegro* v. *Italy*) (*Serbia and Montenegro* v. *Netherlands*) (*Serbia and Montenegro* v. *Portugal*) (*Yugoslavia* v. *Spain*) (*Serbia and Montenegro* v. *United Kingdom*) (*Yugoslavia* v. *United States of America*);

- *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*;
- *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*;
- *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*;
- *Avena and Other Mexican Nationals (Mexico v. United States of America)*;
- *Certain Criminal Proceedings in France (Republic of the Congo v. France)*;
- *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* (in this case, a request was made by Argentina and another was made by Uruguay);
- *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico *v.* United States of America) *(Mexico v. United States of America)*;
- *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*;
- *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*;
- *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia v. Thailand)*.

ANNEX 17

PRELIMINARY OBJECTIONS

The Court gave its decision on the preliminary objections raised in the following 33 cases:

- *Corfu Channel* (*United Kingdom* v. *Albania*);
- *Ambatielos* (*Greece* v. *United Kingdom*);
- *Anglo-Iranian Oil Co.* (*United Kingdom* v. *Iran*);
- *Nottebohm* (*Liechtenstein* v. *Guatemala*);
- *Monetary Gold Removed from Rome in 1943* (*Italy* v. *France, United Kingdom and United States of America*);
- *Certain Norwegian Loans* (*France* v. *Norway*);
- *Right of Passage over Indian Territory* (*Portugal* v. *India*);
- *Interhandel* (*Switzerland* v. *United States of America*);
- *Aerial Incident of 27 July 1955* (*Israel* v. *Bulgaria*);
- *Temple of Preah Vihear* (*Cambodia* v. *Thailand*);
- *South West Africa* (*Ethiopia* v. *South Africa; Liberia* v. *South Africa*);
- *Northern Cameroons* (*Cameroon* v. *United Kingdom*);
- *Barcelona Traction, Light and Power Company, Limited* (*New Application: 1962*) (*Belgium* v. *Spain*);
- *Elettronica Sicula S.p.A.* (*ELSI*) (*United States of America* v. *Italy*);
- *Certain Phosphate Lands in Nauru* (*Nauru* v. *Australia*);
- *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie* (*Libyan Arab Jamahiriya* v. *United Kingdom*) (*Libyan Arab Jamahiriya* v. *United States of America*);
- *Oil Platforms* (*Islamic Republic of Iran* v. *United States of America*);
- *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina* v. *Serbia and Montenegro*);
- *Land and Maritime Boundary between Cameroon and Nigeria* (*Cameroon* v. *Nigeria*);
- *Aerial Incident of 10 August 1999* (*Pakistan* v. *India*);
- *Legality of Use of Force* (*Serbia and Montenegro* v. *Belgium*) (*Serbia and Montenegro* v. *Canada*) (*Serbia and Montenegro* v. *France*) (*Serbia and Montenegro* v. *Germany*) (*Serbia and Montenegro* v. *Italy*) (*Serbia and Montenegro* v. *Netherlands*) (*Serbia and Montenegro* v. *Portugal*) (*Serbia and Montenegro* v. *United Kingdom*);
- *Certain Property* (*Liechtenstein* v. *Germany*);
- *Ahmadou Sadio Diallo* (*Republic of Guinea* v. *Democratic Republic of the Congo*);
- *Territorial and Maritime Dispute* (*Nicaragua* v. *Colombia*);
- *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Croatia* v. *Serbia*)

- *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Georgia* v. *Russian Federation*).

In another seven cases the Court was not called upon to give a decision on the preliminary objections, either because they were withdrawn:

- *Rights of Nationals of the United States of America in Morocco* (*France* v. *United States of America*);

or as the result of a discontinuance by the respondent party:

- *Aerial Incident of 27 July 1955* (*United States of America* v. *Bulgaria*);
- *Barcelona Traction, Light and Power Company, Limited* (*Belgium* v. *Spain*) (first application);
- *Compagnie du Port, des Quais et des Entrepôts de Beyrouth and Société Radio-Orient* (*France* v. *Lebanon*);
- *Trial of Pakistani Prisoners of War* (*Pakistan* v. *India*);
- *Aerial Incident of 3 July 1988* (*Islamic Republic of Iran* v. *United States of America*);
- *Armed Activities on the Territory of the Congo* (*Democratic Republic of the Congo* v. *Burundi*) (*Democratic Republic of the Congo* v. *Rwanda*).

ANNEX 18

QUESTIONS OF JURISDICTION AND/OR ADMISSIBILITY

The Court has ruled on questions of jurisdiction and/or admissibility in a number of cases, a list of which can be found below (classed in order of their entry in the General List of the Court):

- *South West Africa* (*Ethiopia* v. *South Africa*; *Liberia* v. *South Africa*);
- *Appeal Relating to the Jurisdiction of the ICAO Council* (*India* v. *Pakistan*);
- *Fisheries Jurisdiction* (*United Kingdom* v. *Iceland*) (*Federal Republic of Germany* v. *Iceland*);
- *Nuclear Tests* (*Australia* v. *France*) (*New Zealand* v. *France*);
- *Aegean Sea Continental Shelf* (*Greece* v. *Turkey*);
- *United States Diplomatic and Consular Staff in Tehran* (*United States of America* v. *Iran*);
- *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua* v. *United States of America*);
- *Border and Transborder Armed Actions* (*Nicaragua* v. *Honduras*);
- *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* (*Qatar* v. *Bahrain*);
- *East Timor* (*Portugal* v. *Australia*);
- *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina* v. *Serbia and Montenegro*).
  After the Court gave its decision on preliminary objections, it dealt once more with questions of jurisdiction in its judgment on the merits in the case;
- *Fisheries Jurisdiction* (*Spain* v. *Canada*);
- *LaGrand* (*Germany* v. *United States of America*);
- *Arrest Warrant of 11 April 2000* (*Democratic Republic of the Congo* v. *Belgium*);
- *Certain Criminal Proceedings in France* (*Republic of the Congo* v. *France*);
- *Avena and Other Mexican Nationals* (*Mexico* v. *United States of America*);
- *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico *v.* United States of America) (*Mexico* v. *United States of America*);
- *Application of the Interim Accord of 13 September 1995* (*the former Yugoslav Republic of Macedonia* v. *Greece*);
- *Jurisdictional Immunities of the State* (*Germany* v. *Italy: Greece intervening*);
- *Questions relating to the Obligation to Prosecute or Extradite* (*Belgium* v. *Senegal*);
- *Frontier Dispute* (*Burkina Faso/Niger*);
- *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand) (*Cambodia* v. *Thailand*).

ANNEX 19

COUNTER-CLAIMS

Counter-claims were made by the respondent States and admitted by the Court in the following four cases:

- *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina* v. *Serbia and Montenegro*). In an Order of 10 September 2001, the Court placed on record the withdrawal of the counter-claims submitted by the respondent State in this case;
- *Oil Platforms* (*Islamic Republic of Iran* v. *United States of America*);
- *Land and Maritime Boundary between Cameroon and Nigeria* (*Cameroon* v. *Nigeria*);
- *Armed Activities on the Territory of the Congo* (*Democratic Republic of the Congo* v. *Uganda*).

ANNEX 20

APPLICATIONS FOR PERMISSION TO INTERVENE UNDER ARTICLES 62 AND/OR DECLARATIONS OF INTERVENTION UNDER ARTICLE 63 OF THE STATUTE

Applications for permission to intervene under Articles 62 and/or 63 of the Statute were submitted in the following 12 cases:

- *Haya de la Torre (Colombia* v. *Peru)*;
- *Nuclear Tests* cases *(Australia* v. *France) (New Zealand* v. *France)*;
- *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*;
- *Continental Shelf (Libyan Arab Jamahiriya/Malta)*;
- *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*;
- *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the* Nuclear Tests (New Zealand *v.* France) *Case* (in this case, several States filed a document entitled "Application for Permission to Intervene under Article 62/Declaration of Intervention under Article 63"):
- *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria)*;
- *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*;
- *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)* (in this case a Declaration of Intervention under Article 63 was submitted):
- *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*;
- *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening)*.

ANNEX 21

Judgments and Orders Delivered in the Absence of One of the Parties

Twelve Judgments and Orders were delivered in the absence of one of the parties in the following cases:

- *Corfu Channel (United Kingdom* v. *Albania), Assessment of Amount of Compensation;*
- *Anglo-Iranian Oil Co. (United Kingdom* v. *Iran), Interim Protection;*
- *Nottebohm (Liechtenstein* v. *Guatemala), Preliminary Objection;*
- *Fisheries Jurisdiction (United Kingdom* v. *Iceland) (Federal Republic of Germany* v. *Iceland), Interim Protection, Jurisdiction of the Court* and *Merits;*
- *Nuclear Tests (Australia* v. *France) (New Zealand* v. *France), Interim Protection* and *Second Phase;*
- *Trial of Pakistani Prisoners of War (Pakistan* v. *India), Interim Protection;*
- *Aegean Sea Continental Shelf (Greece* v. *Turkey), Interim Protection* and *Jurisdiction of the Court;*
- *United States Diplomatic and Consular Staff in Tehran (United States of America* v. *Iran), Provisional Measures* and *Merits;*
- *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits;*
- *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Jurisdiction and Admissibility.*

ANNEX 22

DISCONTINUANCE

The following cases were discontinued:

- *Protection of French Nationals and Protected Persons in Egypt* (*France* v. *Egypt*);
- *Electricité de Beyrouth Company* (*France* v. *Lebanon*);
- *Aerial Incident of 27 July 1955* (*United States of America* v. *Bulgaria*) (*United Kingdom* v. *Bulgaria*);
- *Barcelona Traction, Light and Power Company, Limited* (*Belgium* v. *Spain*) (first application);
- *Compagnie du Port, des Quais et des Entrepôts de Beyrouth and Société Radio-Orient* (*France* v. *Lebanon*);
- *Trial of Pakistani Prisoners of War* (*Pakistan* v. *India*);
- *Border and Transborder Armed Actions* (*Nicaragua* v. *Costa Rica*);
- *Border and Transborder Armed Actions* (*Nicaragua* v. *Honduras*);
- *Passage through the Great Belt* (*Finland* v. *Denmark*);
- *Certain Phosphate Lands in Nauru* (*Nauru* v. *Australia*);
- *Maritime Delimitation between Guinea-Bissau and Senegal* (*Guinea-Bissau* v. *Senegal*);
- *Aerial Incident of 3 July 1988* (*Islamic Republic of Iran* v. *United States of America*);
- *Vienna Convention on Consular Relations* (*Paraguay* v. *United States of America*);
- *Armed Activities on the Territory of the Congo* (*Democratic Republic of the Congo* v. *Burundi*) (*Democratic Republic of the Congo* v. *Rwanda*);
- *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie* (*Libyan Arab Jamahiriya* v. *United Kingdom*) (*Libyan Arab Jamahiriya* v. *United States of America*);
- *Status vis-à-vis the Host State of a Diplomatic Envoy to the United Nations* (*Commonwealth of Dominica* v. *Switzerland*);
- *Certain Questions concerning Diplomatic Relations* (*Honduras* v. *Brazil*).

The following two cases ended in discontinuance as regarded the question of reparation which the judgment had left to be settled.

- *United States Diplomatic and Consular Staff in Tehran* (*United States of America* v. *Iran*);
- *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua* v. *United States of America*).

ANNEX 23

President Hisashi Owada's Speech to the General Assembly on 26 October 2011

"President Al-Nasser,
Excellencies,
Ladies and Gentlemen,

It is an honour and privilege for me to address the General Assembly for the third time as the President of the International Court of Justice (ICJ) on the Report of the International Court of Justice for the period from 1 August 2010 to 31 July 2011.

I wish to take this opportunity to congratulate you, His Excellency Mr. Al-Nasser, on your election as President of the Sixty-Sixth Session of this Assembly and wish you every success in this distinguished office.

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I would like now, as is traditional, to present a succinct review of the judicial activities of the Court during the past year (October 2010-September 2011). The international community of States continues to bring a wide variety of legal disputes to the Court. Since I addressed you last October, the Court has rendered altogether four Judgments, and three Orders. They are: a Judgment on the merits in the case concerning *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*; one Order on provisional measures, in the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)*; a Judgment on preliminary objections in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation)*; two Judgments denying requests for intervention in the case concerning *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)* respectively filed by Costa Rica and Honduras; as well as an Order granting an Application for permission to intervene in the case concerning *Jurisdictional Immunities of the State (Germany* v. *Italy)* filed by Greece; and an Order on provisional measures in the case concerning the *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand)*. These cases have involved States from all regions of the world, and have raised a broad range of legal questions.

Let me recapitulate them one by one in strict chronological order.

*

1. On 30 November 2010, the Court rendered its Judgment on the merits in the case concerning *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*. As you no doubt recall, this case concerned alleged violations of the rights of Mr. Diallo, a Guinean citizen who settled in the Democratic Republic of the Congo in 1964 and founded two companies, Africom-Zaire and Africontainers-Zaire. At the end of the 1980s, Africom-Zaire and Africontainers-Zaire, acting through their *gérant*, Mr. Diallo, instituted proceedings against their business partners in an attempt to recover various debts. The disputes over the debts continued throughout the 1990s and remained largely unresolved. On 25 January 1988, Mr. Diallo was arrested and imprisoned and a year later released. On 5 November 1995, Mr. Diallo was again arrested and placed in detention with a view to his expulsion, which was carried out on 31 January 1996.

In its prior Judgment of 24 May 2007 on preliminary objections, the Court had held the Application of the Republic of Guinea to be admissible in so far as it concerned protection of Mr. Diallo's rights as an individual and protection of Mr. Diallo's direct rights as *associé* in Africom-Zaire and Africontainers-Zaire, but inadmissible in so far as the Application concerned protection of Mr. Diallo in respect of alleged violations of rights of Africom-Zaire and Africontainers-Zaire. In its final Judgment of 30 November 2010, the first question was that of the protection of Mr. Diallo's rights as an individual. As a preliminary matter, the Court found that the claim relating to Mr. Diallo's arrest and detention in 1988 to 1989 should be excluded from its consideration as it had not been raised by Guinea until its Reply and was neither implicit in the original Application, nor did it arise directly out of a question in that Application, which concerned events in 1995 to 1996.

On that basis the Court considered Guinea's claim that the circumstances in which Mr. Diallo was arrested, detained and expelled during the period 1995 to 1996 constituted a breach by the DRC of its international obligations. Guinea argued that Mr. Diallo's expulsion from the Democratic Republic of the Congo breached Article 13 of the International Covenant on Civil and Political Rights and Article 12, paragraph 4, of the African Charter on Human and Peoples' Rights. On this point, the Court observed that, in order to comply with those provisions, the expulsion of an alien lawfully in the territory of a State which is a party to those instruments must be decided in accordance with applicable domestic law and must not be arbitrary in nature. The Court held that the expulsion decree of 31 October 1995 did not comply with Congolese law and that thus the expulsion was in violation of Article 13 of the International Covenant on Civil and Political Rights and Article 12, paragraph 4, of the African Charter.

The Court also found that Mr. Diallo's right, afforded by Article 13 of the Covenant, to have his case reviewed by a competent authority had not been respected, and that the DRC had not demonstrated 'compelling reasons of national security' to justify the denial of that right.

Furthermore, the Court held that Mr. Diallo's arrests and detention also violated Article 9 of the Covenant and Article 6 of the African Charter, concerning liberty and security of the person. It found that the deprivations of liberty suffered by Mr. Diallo did not take place in accordance with DRC law, were arbitrary, and that Mr. Diallo had not been informed, at the time of his arrests, of the reasons for those arrests or the charges against him. In addition, the Court found that the DRC had also violated Article 36 (1) *(b)* of the Vienna Convention on Consular Relations by not informing Mr. Diallo, at the time of his arrests, of his right to request consular assistance from his country. On the other hand, with regard to the claim of Guinea that Mr. Diallo was subjected to inhuman or degrading treatment while in detention, the Court concluded that Guinea had failed to establish that such had been the case.

The second question that the Court dealt with in accordance with the disposition of the earlier Judgment was the question of the protection of Mr. Diallo's direct rights as *associé* in Africom-Zaire and Africontainers-Zaire. On this question, the Court considered Guinea's claim that the DRC had committed several internationally wrongful acts which engaged its responsibility towards Guinea; in particular, the claim that there had been breaches of Mr. Diallo's right to take part and vote in general meetings, of his rights relating to the *gérance* (management) of the companies, of his right to oversee and monitor that management and the right to property of Mr. Diallo over his *parts sociales* (shares) in the companies. The Court found that the alleged rights of Mr. Diallo as *associé* were not legally denied, even though their exercise may have been made more difficult by Congo's expulsion of Mr. Diallo. The Court did not find that any of these claimed breaches had occurred.

In the light of the circumstances of the case, in particular the fundamental character of the human rights obligations breached, the Court upheld Guinea's claim for reparation in the form of compensation for the injury suffered by Mr. Diallo.

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2. The next decision rendered by the Court in the period under review was its Order of 8 March 2011 on the request for the indication of provisional measures, pursuant to Article 41 of the Statute of the Court, in the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)*. This case was brought by Costa Rica by an Application filed on 18 November 2010, in which it founded the jurisdiction of the Court on Article XXXI of

the Pact of Bogotá and on the declarations made by the two States pursuant to Article 36, paragraph 2, of the Statute. The Application was filed in regard to an alleged 'incursion into, occupation of and use by Nicaragua's Army of Costa Rican territory as well as breaches of Nicaragua's obligations towards Costa Rica'. Costa Rica claimed that Nicaragua had occupied the territory of Costa Rica on two separate occasions in connection with the construction of a canal, as well as certain related works of dredging on the San Juan River.

Pending the determination of the case on the merits, Costa Rica requested the Court to order as provisional measures that Nicaragua not station troops or other personnel, engage in construction or enlargement of a canal, fell trees, remove vegetation, or dump sediment in the area concerned; that Nicaragua suspend its dredging programme; and that Nicaragua refrain from any other action which might prejudice the rights of Costa Rica.

In its Order on provisional measures of protection, the Court determined that the instruments invoked by Costa Rica appeared, prima facie, to afford a basis on which the Court had jurisdiction to rule on the merits, enabling it to indicate provisional measures if it considered that the circumstances so required. The Court also found that the rights to be protected by these requested measures — in particular the right to assert sovereignty over a contested area along the boundary — were plausible, and that a link existed between the rights the protection of which was being sought and the provisional measures requested.

On the basis of this finding that it had the power to indicate provisional measures, the Court proceeded to examine whether there was a real and imminent risk that irreparable prejudice might be caused to the rights in dispute before the Court had given its final decision and found that, given that Nicaragua intended to carry out certain activities, if only occasionally, in the contested area, a real risk of irreparable prejudice to Costa Rica's claimed title to sovereignty over the said territory did exist. It further found that this situation gave rise to a real and present risk of incidents liable to cause irremediable harm in the form of bodily injury or death.

On the basis of these findings, the Court decided to indicate provisional measures to both of the Parties, ordering that each Party refrain from sending to, or maintaining in the disputed territory any personnel, whether civilian, police or security, until such time as the dispute on the merits had been decided or the Parties had come to an agreement on the subject. In addition, the Court held that Costa Rica may despatch civilian personnel charged with the protection of the environment of the disputed territory, in so far as it is necessary to avoid irreparable prejudice being caused to the part of the wetland where that territory is situated, on the condition that Costa Rica consult with the Secretariat of the Ramsar Convention on Wetlands in regard to these actions, and give Nicaragua prior notice of them. The Court also ordered that each Party refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve, and that each Party inform the Court as to its compliance with the provisional measures.

*

3. The third decision of the Court related to its Judgment of 1 April 2011 on preliminary objections in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation)*. As you no doubt recall proceedings in that case were instituted on 12 August 2008, when Georgia brought a case against the Russian Federation, alleging a violation by the latter of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter 'CERD'). Georgia founded the jurisdiction of the Court on Article 22 of that Convention. The Court gave its judgment in 2008 on the Application in respect to provisional measures of protection, finding that it had prima facie jurisdiction. In the next phase of the case the Russian Federation raised four preliminary objections to the Court's jurisdiction under Article 22 of CERD:

(1) that no dispute between the Parties existed concerning the interpretation or application of CERD;

(2) that the procedural requirements of Article 22 of CERD had not been fulfilled;

(3) that the alleged wrongful conduct had taken place outside the territory of the Russian Federation, and thus the Court lacked jurisdiction *ratione loci*; and

(4) that any jurisdiction that the Court might have was limited *ratione temporis* to events which had occurred after the entry into force of CERD between the Parties on 2 July 1999.

The Court examined the Russian Federation's first preliminary objection in relation to events during three distinct time periods. With respect to the first period before CERD had entered into force between the Parties on 2 July 1999, the Court concluded that there was no evidence of the existence of a dispute about racial discrimination during that period and that even if a dispute had been found to have existed, it could not have been a dispute between the Parties with respect to the interpretation or application of CERD. With regard to the second, from the period after CERD entered into force between the Parties and before the beginning of armed conflict between them in early August 2008, the Court reviewed documents and statements during this period and concluded that none of the documents or statements from that period provided any basis for a finding that there was a dispute between Georgia and the Russian Federation with respect to the interpretation and application of CERD during that time frame. With respect to the events during the third period which related to August 2008, in particular after the armed hostilities in South Ossetia that had begun during the night of 7 to 8 August 2008, the Court found that, while Georgia's claims primarily focused on allegations of unlawful use of force, they also expressly referred to ethnic cleansing by Russian forces. All of these claims had been made against the Russian Federation directly and had been rejected by the latter. The Court thus concluded that by 12 August 2008, there was a dispute between Georgia and the Russian Federation about the latter's compliance with its obligations under CERD. The Court accordingly dismissed the Russian Federation's first preliminary objection.

The Court then examined the Russian Federation's second preliminary objection concerning the procedural requirements of Article 22 of CERD, which provides that '[a]ny dispute . . . which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall . . . be referred to the ICJ for decision'. It found, based on an analysis of the ordinary meaning of the phrase used, that Article 22 did establish certain preconditions to be fulfilled before the Applicant could seise the Court on the basis of Article 22.

On that basis, the Court examined whether such preconditions had been met. In the instant case, with regard to the requirement to follow 'the procedures expressly provided for in CERD', the Court took note that both sides agreed that, prior to the seisin of the Court, Georgia did not claim that it had used or attempted to use this mode of dispute resolution. The Court thus focused on the question of whether negotiation was a required precondition and, if so, whether that condition had been fulfilled. It observed, in the light of its finding on the first preliminary objection that a dispute had arisen only as of 9 August 2008, that the issue could be examined in relation to the period between that date and 12 August 2008, when the Application was filed. After reviewing the facts in the record relating to that period, the Court found that, although certain claims and counter-claims were made by the Parties during that period concerning ethnic cleansing which might evidence the existence of a dispute as to the interpretation and application of CERD, they did not amount to attempts at negotiations by either Party. The Court thus concluded that Georgia had not established that in the relevant period, it had attempted to negotiate CERD-related matters with the Russian Federation, or that Georgia and the Russian Federation had engaged in negotiations with respect to the latter's compliance with its substantive obligations under CERD.

Having determined that this requirement contained in Article 22 had not been satisfied, the Court concluded that it did not need to determine whether the two conditions set out in Article 22 were cumulative or alternative. The Court accordingly held that Article 22 of CERD could not serve to found the Court's jurisdiction, and upheld the Russian Federation's second preliminary objection. It thus concluded that the case could not proceed to the merits phase, noting that it did not need to consider the Russian Federation's third or fourth preliminary objections.

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4. Let me now turn to the two Judgments of 4 May 2011 relating to a request to intervene in the case concerning *Territorial and Maritime Dispute (Nicaragua v. Colombia)* filed respectively by Costa Rica and Honduras. The principal case between Nicaragua and Colombia concerns the disputed sovereignty over several maritime features in the Caribbean Sea as well as the plotting of the maritime boundary between the Parties. On 25 February 2010 and 10 June 2010, respectively, Costa Rica and Honduras filed requests for permission to intervene in the case.

As for Costa Rica, it stated in its Application that it sought to intervene as a non-party for the 'purpose of informing the Court of the nature of [its] legal rights and interests and of seeking to ensure that the Court's decision regarding the maritime boundary between Nicaragua and Colombia does not affect those rights and interests'. In its Judgment of 4 May 2011 on whether to grant Costa Rica's Application to intervene, the Court first defined the legal framework for intervention provided for under Article 62 of the Statute and Article 81 of the Rules of Court.

The Court examined whether Costa Rica had established an 'interest of a legal nature which may be affected' by the decision in the main proceedings. The Court accepted that although Nicaragua and Colombia differed in their assessment as to the limits of the area in which Costa Rica might have a legal interest, they both recognized the existence of Costa Rica's interest of a legal nature in at least some areas claimed by the Parties to the main proceedings.

However, the Court, examining whether Costa Rica had established that the interest of a legal nature which it had set out was one which 'may be affected' by the decision of the Court in the main proceedings, concluded that Costa Rica had not succeeded in establishing that point. The Court stated that it was in constant practice, when drawing a line delimiting the maritime areas between the Parties to the main proceedings, that it would, whenever necessary, end the line in question before it reached an area in which the interests of a legal nature of third States might become involved. In this situation, the Court held that the Costa Rican Application for permission to intervene in the case could not be granted.

As for Honduras, Honduras made clear in its Application that it primarily sought to be permitted to intervene in the pending case as a party. It was only if the Court did not accede to that request that

Honduras requested, in the alternative, to be permitted to intervene as a non-party. In its Judgment of 4 May 2011 on whether to grant this Application of Honduras to intervene, the Court devoted a significant part of its analysis to the question of intervention as a party. The Court noted that while neither Article 62 of the Statute nor Article 81 of the Rules of Court specified the capacity in which a State might seek to intervene, it is accepted by the case law of the Court that a State might be permitted to intervene either as a non-party or as a party. The Court pointed out, however, that whatever the capacity in which a State is seeking to intervene, whether as a party or a non-party, it must fulfil the condition laid down by Article 62 of the Statute and demonstrate that it has an interest of a legal nature which might be affected by the future decision of the Court. On that basis, the Court turned to an examination of whether Honduras had satisfied that condition. The area in which Honduras had specified that it had an interest of a legal nature which might be affected by the decision in the main proceedings was an area which had been the subject of the Court's Judgment of 8 October 2007 in the case concerning *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)*. The question on which the Court focused was whether that Judgment of 2007, to which Honduras was a party, barred it from making this request to intervene in a case which Honduras claimed to have 'an interest of a legal nature'.

The Court decided that by virtue of the principle of *res judicata*, as applied to the Judgment of 8 October 2007, Honduras could not have an interest of a legal nature in the area south of the maritime boundary line established by the Court in that decision. With respect to the area north of that boundary line, the Court concluded that Honduras could have no interest of a legal nature which might be affected by the decision in the main proceedings for the simple reason that neither of the Parties to the new proceedings, i.e., Nicaragua and Colombia, was contesting the rights of Honduras over that area. The Court held that Honduras had no interest of a legal nature which might be affected in any of the maritime areas it had identified in its Application. The Court further observed that Honduras could not claim an interest of a legal nature in the effects that the decision of the Court in the main proceedings might have on the rights of Honduras under the 1986 Maritime Delimitation Treaty which had been agreed between Honduras and Colombia, inasmuch as the bilateral treaty was a matter exclusively between Honduras and Colombia and as such it had no relevance to the Court's eventual determination of the maritime boundary between Nicaragua and Colombia.

For these reasons, the Court held that the Honduran Application for permission to intervene in the case, either as a party or as a non-party, could not be granted.

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5. The next case in which the Court handed down its decision in the form of an Order on 4 July 2011 relates to a request to intervene by Greece in the case concerning *Jurisdictional Immunities of the State (Germany* v. *Italy)*. The Hellenic Republic filed an Application for permission to intervene in that case on 13 January 2011. The main proceedings to which the Application relates concerns a dispute over whether Italy has violated the jurisdictional immunity of Germany by allowing civil claims against it in Italian courts based on violations of international humanitarian law by the Third Reich during the Second World War. The basis for Greece's Application to intervene was that it had an interest of a legal nature, to the extent that the Court, in the decision it will be called upon to render in the case between Germany and Italy, would rule on the question whether 'a judgment handed down by a Greek court can be enforced on Italian territory (having regard to Germany's jurisdictional immunity)'. Greece stated that the decision of the Court as to whether Italian and Greek judgments for which the Italian court had given judgment to enforce in Italy may be enforced in Italy was directly and primarily of interest to Greece and could affect its interest of a legal nature.

The Court took the position that, in a judgment that it would render in the main proceedings between Germany and Italy, the Court might find it necessary to consider also the decisions of Greek courts in the context of the principle of State immunity (the issue in the main proceedings), for the purposes of examining the request in Germany's submissions relating to the issue of whether Italy committed a breach of Germany's jurisdictional immunity by declaring Greek judgments as enforceable in Italy. Given that possibility, the Court held that this element was sufficient to conclude that Greece had an interest of a legal nature which may be affected by the judgment in the main proceedings.

Greece having fulfilled the criteria for intervention laid down in Article 81 of the Rules of Court, the Court granted its request to intervene as a non-party, in so far as this intervention would be limited to decisions relating to illegal acts committed by Germany during the Second World War rendered by Greek domestic courts and declared enforceable by Italian courts. The request having been granted, the Court gave its decision in the form of an Order of a procedural nature, specifying the form of procedure to follow, rather than in the form of a judgment as it was in the two previous judgments (see para. 4 above) which I discussed in this report.

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6. Let me turn now to the sixth case an Order on provisional measures handed down by the Court on 18 July 2011 in the case concerning the *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear

(Cambodia *v.* Thailand) (*Cambodia* v. *Thailand*). Cambodia filed a Request for interpretation of an earlier Judgment rendered by the Court on 15 June 1962, under Article 60 of the Statute of the Court on 28 April 2011, claiming that a dispute existed between the Parties as to the meaning and scope of this 1962 Judgment. In the 1962 Judgment, the Court had found *inter alia* that Cambodia held sovereignty over the Temple of Preah Vihear, situated in the border area between Cambodia and Thailand.

On the same day that it filed its Application for interpretation of the 1962 Judgment, Cambodia also submitted a Request for the indication of provisional measures in order to 'cause [the] incursions onto its territory [by Thailand] to cease' pending the Court's decision on the Request for interpretation of the 1962 Judgment.

At this stage of the proceedings, when the Court dealt with the Request for provisional measures, the Court first addressed the issue of whether a dispute appeared to exist as to the meaning or scope of the 1962 Judgment, relating in particular

(1) to the meaning and scope of the phrase 'vicinity on Cambodian territory' used in the operative clause of that Judgment;
(2) to the nature of the obligation imposed on Thailand by the operative clause, to 'withdraw any military or police forces, or other guards or keepers'; and
(3) to the issue of whether the Judgment did or did not recognize with binding force the line shown on the map submitted by Cambodia in the original proceedings as representing the frontier between the two Parties.

In its Order of 18 July 2011, the Court held that the rights claimed by Cambodia, in so far as they were based on the 1962 Judgment as interpreted by Cambodia, were plausible, and that the necessary link between the alleged rights and the measures requested had been established. Examining whether there was a real risk of irreparable prejudice that might be caused to the rights which were in dispute, the Court concluded that because of the persistent tensions and absence of a settlement to the conflict, there was a real and imminent risk of irreparable prejudice being caused to the rights claimed by Cambodia, and there was urgency.

On this basis, the Court decided to indicate provisional measures to both Parties. In the Order, the Court in particular established a provisional demilitarized zone, the co-ordinates of which were set out in its Order, and ordered both Parties immediately to withdraw their military personnel from that zone and to refrain from any military presence within that zone and from any armed activity directed at that zone. The Court also ordered both Parties

(1) to continue the co-operation which they had entered into within ASEAN and, in particular, to allow the observers appointed by that organization to have access to the provisional demilitarized zone;

(2) to refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve; and

(3) to inform the Court as to compliance with the provisional measures. It also ordered Thailand not to obstruct Cambodia's free access to the Temple of Preah Vihear or Cambodia's provision of fresh supplies to its non-military personnel in the Temple.

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In addition to these seven decisions handed down during the reporting period for 2010/2011, the Court has held hearings in March 2011 in the case concerning *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia* v. *Greece)*; this case has completed its written and oral proceedings and is now under deliberation by the Court. Although outside of the reporting period, I should also mention that the Court has also completed and held hearings in the case concerning *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening)* and is now under deliberation by the Court with a view to its final decision. In addition, the Court is currently considering the request for an advisory opinion made by the International Fund for Agricultural Development (IFAD) in respect of Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization on a parallel basis.

As you can see, given a remarkable increase in the number of cases on the docket, the Court is now opining on more than a few cases on a parallel basis, thus making its best endeavours to eliminate a backlog on judicial work. Our current docket stands at fifteen cases, but most of them are still at the stage of being in the hands of the parties who are presenting their written proceedings in advance of the oral hearings. The two most recent cases that have been filed during the reporting period in question are the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and the case concerning the *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand)*. I know that the best efforts are being made by the Court to respond to the high expectations of the international community for an expeditious handling of the cases referred to the International Court of Justice.

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Mr. President,
Distinguished Delegates,
Ladies and Gentlemen,

This marks my final address to you as President of the International Court of Justice. It thus seems an appropriate moment to reflect on the trust that the international community of States continues to place in the Court to handle a wide variety of legal disputes. States from all corners of the world, faithful to their attachment to international law, continue to have recourse to the Court in order to find a judicial settlement to their disputes. In the three years of my presidency, the docket has never contained less than 15 cases. In fact, in the last ten years, there has been an average of at least 15 cases on the docket, and sometimes as many as 28 cases[1]. As is apparent from the overview I have given today of the Court's work in the last year, the substantive areas on which the Court is being asked to rule are broader in scope than ever before, with each case presenting distinct legal and factual elements. Furthermore, cases are frequently made up of different incidental phases, from preliminary objections to provisional measures, to requests for intervention and interpretation. The Court has as a result been consistently handling cases in parallel and shortening the time between the closure of written proceedings and the opening of the oral proceedings.

It is no exaggeration to say that all regions of the world have become closely intertwined. In this twenty-first century, international politics are undeniably interconnected; a truly global economy has emerged; and our natural environment and global climate change have created new challenges. In these times of unprecedented interconnection between States and peoples, it is my sincere belief that a firm reliance on international law must underpin any and all future developments on the global stage. The International Court of Justice, as guardian of international law, is proud to play a vital role in our increasingly globalized world.

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Mr. President,
Distinguished Delegates,
Ladies and Gentlemen,

It is my hope that Member States will continue to rely on the International Court of Justice to assist them in the pacific settlement of their disputes and that more States will accept the Court's jurisdiction, be that through a declaration under Article 36, paragraph 2, of the Statute, or through the signature of the many multilateral treaties which now contain compromissory clauses that refer disputes as to the interpretation or application of those treaties to the Court.

Let me close by offering my profound thanks not only for the opportunity to address you today, but also in the trust you have placed in the Court over the past three years. I wish you a most productive Sixty-Sixth Session of this Assembly."

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[1] *I.C.J. Annual Report 2002-2003*, document A/58/4.

ANNEX 24

President Hisashi Owada's Speech to the Security Council on 25 October 2011

"Madam President Ambassador Joy Ogwu,
Distinguished Delegates,
Excellencies,
Ladies and Gentlemen,

This is my third, indeed the last time to address you as the President of the Court. It is with a renewed sense of appreciation to have this opportunity to reflect upon the organic linkage between our two respective principal organs of the United Nations. We stand together, though in a complementary manner, in our common pursuit of the objectives of maintaining international peace and security and promoting the rule of law in our world.

Article 1, paragraph 1, of the United Nations Charter identifies one of the primary purposes of the United Nations, as consisting in 'maintain[ing] international peace and security, and to that end tak[ing] effective collective measures for the prevention and removal of threats to the peace, and for the suppression of aggression or other breaches of the peace . . .'. Over two decades after the demise of the Cold War, we are still confronted with a challenge to bring the ideals of the Charter to fruition.

The mechanism for discharging the responsibility for the maintenance of international peace and security through the peaceful settlement of disputes as well as the collective security system is mainly incorporated in Chapters VI and VII of the Charter. The challenge to this mechanism provided for in the Charter, through threats or use of force, however, seems to be increasing in complexity as a result of diverse developments that have emerged with the demise of the Cold War. These developments sometimes make us query whether the original scheme of the Charter for an effective collective security system based on the assumption that a 'unity of purpose' based on the common interest would lead to a 'unity in action', is still valid in the present circumstances. The post-Cold War world has created a new type of asymmetry and disharmony in the international system that could disrupt the proper functioning of this system. Moreover, developments in humanitarian crises in many parts of the world have brought to our attention a new type of threat born in the context of the emergence of 'failed States'. This is a different type of threat to peace and security in the international community which had not been envisaged in 1945 under the collective security system provided for in Chapter VII. The rise of international terrorism by non-State actors has created yet another new type of threat to the security of States, as well as that of the international community as a whole.

The environment surrounding the Court also began to see a new landscape settling in around the period of the 1980s when we saw the Court becoming particularly active with an increasing number of States submitting their disputes to the Court. Those disputes, which do not necessarily relate per se to armed conflicts, nevertheless relate to tensions involving threats or acts of hostilities. The cases before the Court can therefore often present a similar set of factual and legal issues to those situations that the Security Council is seised of.

Against this background, it is my conviction that we must endeavour to strengthen the respective roles of our two principal organs in the field of maintenance of peace and security. Our respective roles for the settlement of international disputes, which may lead to a breach of peace, both form part and parcel of the mechanism established by the Charter to ensure the preservation and maintenance of international peace and security by the Organization. However, the respective roles of our two organs are not the same, as the principles to be applied and the means with which to achieve the common purpose are distinct from each other, depending on the capacity in which the competent United Nations organ is acting, i.e., one as the organ for the peaceful settlement of disputes through judicial means and the other as the organ for maintaining peace and security through political means, including its power of enforcement under Chapter VII of the United Nations Charter. There are thus distinct roles to be played by the two organs. Today I would like to look at the ways in which the Court and the Security Council can complement each other's roles from two angles.

1. Constitutional links between the Court and the Security Council

There are factors contained in the Charter which merit our careful attention, as creating an organic link between our two organs — the Council and the Court. I would like to mention three points.

First, Article 36, paragraph 3, provides that 'in making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred to by parties to the International Court of Justice'. This is an important Article, but it has not been utilized by the Security Council since the early days of the United Nations when it was employed in the *Corfu Channel* case in 1947 to recommend both the United Kingdom and Albania to refer the dispute to the Court. I believe the Security Council could give much more attention to this provision and consider the possibility of much fuller use of the Court in a number of cases which come before the Council.

Secondly, one of the most critical aspects of the judgment of the Court in a contentious case is to ensure the compliance with the judgment by the parties. Article 94, paragraph 2, of the Charter provides for a procedure for resorting to the Security Council to ensure compliance with the judgment:

> 'if any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment'.

This admittedly is not a provision for enforcement of a judgment per se. Nevertheless, this is an important provision worth reflecting upon in the context of the promotion of the rule of law. While it is certainly not mandatory upon the Security Council to always take steps in this direction, such an action by the Security Council will be conducive to the restoration of peace and security and justice in relation to the situation in question. I earnestly hope that in such a case the Security Council will give serious consideration to taking steps for making recommendations or for deciding upon measures to give effect to the judgment. The judgment is binding upon the parties in accordance with the Charter and the Statute, and its compliance is cardinal for consolidating the rule of law in international relations.

Thirdly, the Court has often been involved in the unique function of giving an advisory opinion at the request of an organ of the United Nations, such as the Security Council or the General Assembly. This function is conceived as an important aspect of collaboration between other principal organs of the United Nations and the Court. The aim of the advisory function of the Court may not consist in directly resolving concrete disputes between States, and its opinions are not, in principle, binding. Nevertheless, the legal advice to organs competent to request the Court will give an elucidation on points of law involved in many of the situations which could lead to discordance and even disruption in relations between States in the present day world, and thus contribute to the maintenance of peace and security in a given situation. I suggest more use of this venue could be considered in this regard.

2. The issue of substantive links between the two organs

Apart from these constitutional links between the two organs that can be made more effective, the recent jurisprudence of the Court also shows how the two organs, the Security Council and the Court, are inter-connected on a substantive level. In this connection, I would like to draw your attention to three recent instances where the link between the two institutions has contributed to the maintenance of international peace and security. The degree of involvement of the two organs in these cases varies from one another, but they all demonstrate the relevance and the importance of the respective roles of each of us in performing its own functions.

A. Situation involving Georgia *v.* Russia

Earlier this year, on 1 April 2011, the Court rendered a judgment, at its preliminary objections phase, on a dispute which also had been a subject of active discussion before this Council. It is the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*. Needless to say, the angles from which the two organs looked at the issues involved were different, one being concerned strictly with the international legal perspective of the situation, while the other looking at the situation in a much broader political context. The consequences of such examination of the case by the Court at its phase of preliminary objection have revealed interesting legal elements involved in the case. The judgment of the Court at this phase is to be contrasted with an earlier phase of the examination of the same issue i.e., at the stage of the indication of provisional measures by the Court. As you are aware, the Court had already dealt with a Georgian request for the indication of provisional measures of protection on this subject in its Order of 15 October 2008, by which it ordered certain measures of protection to both Parties, based on prima facie jurisdiction. At that point in time in 2008, barely two months after the outbreak of armed hostilities the ongoing link that could exist between the work of the respective organs in a mutually supportive and complementary way was much less readily discernable. The examination of the situation by the Court at the more recent preliminary objection phase in 2010 was different. This was the stage at which the Court was to examine the challenge by the Respondent to the jurisdiction of the Court. It was alleged by Georgia that the Russian Federation had violated the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter 'CERD'). In order to establish the jurisdiction of the Court, Georgia relied on the compromissory clause in Article 22 of that Convention.

I would not repeat what I will present in this case in my address to the General Assembly. The Court dealt with the first two preliminary objections, namely the existence of a dispute and the procedural requirements of Article 22 of the CERD. The conclusion reached by the Court was that it recognized that there was a dispute between the two Parties which fell within the scope of the CERD. This was demonstrated, *inter alia*, by the decision of the Security Council in relation to the events which had taken place after the armed hostilities in South Ossetia that had begun during the night of 7 to 8 August 2008.

However, based on an analysis of the events that evolved, including before the Security Council, the Court found that the conditions required for the application of Article 22 were not fulfilled, during the period of August 2008, when the dispute took a concrete form. To reach this conclusion, the Court had to look into the situation more closely in order to analyse and determine how much negotiations had been going on at the political level, including the discussions of the situation in the Security Council. Thus, the case was dismissed on the ground that the Court has no jurisdiction to deal with it, without further examination of its merits phase.

It is true that the *Georgia* v. *Russia* case provides an example of a situation in which the participation of the Court had to stop short of acting in a concrete manner to contribute to the peaceful settlement of disputes. Nevertheless, this case illustrates the institutional framework in which the Court examines whether it is empowered to resolve the dispute of which it is seised through judicial means, in contrast to the more plenary powers granted to the Security Council under the Charter.

B. The situation involving Costa Rica *v.* Nicaragua

In the past year, the Court has dealt with two cases in which requests for interim measures of protection were submitted. Given the fact that the procedures on the merits can take on average a few years since the filing of the Application, the provisional measures phase — which takes precedence over all other cases under deliberation — may be the one in which the Court can contribute to the attenuation of a conflict situation on a fast-track basis.

The two cases I will refer to relate to transborder security matters between neighbouring States. The first one is the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)*. Following the alleged dredging operation and other works conducted by Nicaragua on the San Juan River in October 2010, Costa Rica filed an Application on 18 November 2010 in regard to an alleged 'incursion into, occupation of and use by Nicaragua's Army of Costa Rican territory as well as breaches of Nicaragua's obligations towards Costa Rica'. The Parties to the conflict both claim territorial sovereignty over the same area. According to the Applicant, Costa Rica, Nicaragua occupied the territory of Costa Rica on two separate occasions in connection with the construction of a canal across what it alleged was the north-east end of the Costa Rican territory, as well as certain dredging works conducted on the San Juan River. For Nicaragua, the Respondent, the activities it is accused of by Costa Rica took place on Nicaraguan territory and they did not cause, nor did they risk causing, irreparable harm to the Applicant. These activities involved Nicaraguan military personnel. Costa Rica brought this matter to a regional organization, the Organization of American States, of which both States are parties, while reserving that, should it not be solved, it shall be submitted to the Security Council.

Costa Rica at the same time filed the case with the Court, and requested the Court to order provisional measures to the effect that: (i) Nicaragua not station troops or other personnel, engage in construction or enlargement of a canal, fell trees, remove vegetation, or dump sediment in the area concerned; (ii) Nicaragua suspend its dredging programme; and (iii) Nicaragua refrain from any other action which might prejudice the rights of Costa Rica.

In its Order on indication of provisional measures of protection of 8 March 2011, the Court determined that there existed prima facie jurisdiction to rule on the merits of the case relating to the claimed right of sovereignty over the disputed territory, and that a link existed between the rights to be protected and the provisional measures requested. On this basis, the Court held that it had the power to indicate provisional measures if the circumstances so required. The Court gave an Order indicating provisional measures of protection on the ground that a tangible risk of irreparable prejudice to Costa Rica's claimed right of sovereignty over the said territory did exist and that the risk was imminent.

In indicating provisional measures to both of the Parties, the Court was mindful not to encroach upon the issues that were to be determined at the merits stage, namely the attribution of sovereignty over the area disputed between the Parties. The Court ordered that each Party refrain from sending to, or maintaining in the disputed territory any personnel, whether civilian, police or security, until such time as the dispute on the merits had been decided or the Parties had come to an agreement on the subject; at the same time it indicated that, on the basis that the area in question belonged to the wetland registered as Costa Rican in the framework of the Ramsar Convention on Wetlands, Costa Rica might despatch civilian personnel charged with the protection of the environment of the disputed territory, in so far as it was necessary to avoid irreparable prejudice being caused to the part of the wetland where that territory is situated, subject to prior consultation with the Secretariat of the Ramsar Convention in regard to these actions as well as prior notice to be given to Nicaragua. This point in the Order, it may be suggested, is reminiscent of the function of the Security Council under Article 40 of the Charter, by which the Security Council, in order to prevent an aggravation of the situation, may 'call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable'. The Court also ordered that each Party refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve, and that each Party inform the Court as to its compliance with the provisional measures. Here again, one can discern common, though complementary, roles that the Security Council and the International Court of Justice can play with a view to preventing aggravation of the situation, so that eventual restoration of peace may come about.

It is hoped that a judgment of the Court will have the effect of resolving the parties' competing claims over a portion of a territory that formed the subject of an arbitration award rendered over 100 years ago. The return of such disagreements to the fore emphasizes the necessity of the Court as a body to which the parties may submit matters still in controversy.

C. The case of Cambodia *v.* Thailand

Another case by which I wish to illustrate the parallel role of the Court and the Security Council relates to the recent indication by the Court of provisional measures in a context involving armed hostilities between the Parties, Cambodia and Thailand.

The area of the Temple of Preah Vihear had long been the subject of competing claims of territorial sovereignty between the two States before the International Court of Justice rendered its Judgment in 1962 on the dispute brought by Cambodia. In that Judgment, the Court decided that the Temple of Preah Vihear was situated in territory under the sovereignty of Cambodia. In spite of this Judgment, tensions began flaring up again in the border region especially since 2008, resulting in armed clashes starting from around October 2008. The matter, as you recall, was brought to the Security Council and the Council issued a press statement on the subject ('on Cambodia-Thailand Border Situation') in February 2011. It may be useful to recall the salient points of the statement, which called on the two sides: (1) to display maximum restraint and avoid any action that may aggravate the situation; (2) to establish a permanent ceasefire; and (3) to implement it fully and resolve the situation peacefully and through effective dialogue. It is to be noted that the Security Council also expressed support for ASEAN's active efforts in this matter and encouraged the parties to continue to co-operate with the regional organization in this regard.

Two months later, however, armed clashes did not subside and one of the Parties to the conflict, i.e., Cambodia, decided to bring the case before the International Court of Justice. Admittedly, the case was then approached from a different angle, i.e., from the legal point of view. The Request by Cambodia was to ask the Court to engage in the clarification of the legal basis on which the respective position of the Parties rested, in the form of a *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand)*. At the same time, the Applicant also filed a Request for the urgent indication of provisional measures.

According to the Application of Cambodia, the question put to the Court was confined to one legal issue — the interpretation of the operative paragraph (2) of the 1962 Judgment to the effect that '[t]he obligation incumbent upon Thailand to 'withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory' be considered as 'a particular consequence of the general and continuing obligation to respect the territorial integrity of Cambodia', and that, in accordance with the 1962 Judgment, the Court should declare that Cambodia's territory had been delimited in the area of the Temple and its vicinity in accordance with a map referred to on page 21 of that Judgment. In its request for indication of provisional measures, Cambodia further asked the Court to order (1) an immediate and unconditional withdrawal of all Thai forces from those parts of Cambodian territory situated in the area of the Temple to preserve the rights of Cambodia as claimed by it under the Judgment; (2) a ban on all Thai military activity in the area; and (3) that Thailand refrain from any act or action which could interfere with the rights of Cambodia or aggravate the dispute in the principal proceedings.

The Court, in considering the Request for the indication of provisional measures, had to ensure that its decision would not encroach upon the questions belonging to the merits phase, especially the issue of the territorial delimitation in relation to the interpretation of the operative paragraph 2 of the 1962 Judgment. The Court, after having found that it had prima facie jurisdiction to deal with the Request for interpretation of Cambodia on the basis of Article 60 of the Statute in as much as a dispute appeared to exist between the parties as to the meaning or scope of the 1962 Judgment, and after having satisfied itself that the other conditions for the indication of provisional measures were met (in particular those relating to the irreparable prejudice) ordered both Parties: (1) to immediately withdraw their military forces from a zone as delimited by the Court in the present Order as a 'provisional demilitarized zone'; (2) to refrain from any military presence within that zone or from any armed activities directed at that zone; and (3) for Thailand not to obstruct Cambodia's free access to the Temple of Preah Vihear (which the Court had already determined as belonging to Cambodia in its 1962 Judgment as *res judicata*) or Cambodia's provision of fresh supplies to its non-military personnel in the Temple. Moreover, in relation to efforts made within the framework of the ASEAN, with which the Security Council had also encouraged the Parties to co-operate, the Court called on both Parties to continue the co-operation with ASEAN and, in particular, to allow the observers appointed by that organization to have access to the provisional demilitarized zone.

It should be stated that this is the first time that the International Court of Justice, in an Order for provisional measures of protection, has set up a provisional demilitarized zone going beyond the disputed area between the Parties, in order to ensure the recurrence and aggravation of the conflict be avoided pending the final outcome of the Judgment on the merits. While this is of course a provisional measure indicated without prejudice to a subsequent decision by the Court on the principal request for interpretation, it is interesting to observe the parallel approaches adopted both by the Security Council and by the International Court of Justice, with a view to achieving a common, if separate, objective of restoring and maintaining peace and security in the context of an ongoing armed conflict. It is noteworthy also that both the Security Council and the Court drew the particular attention of the Parties to the important function played by a regional organization such as ASEAN under Chapter VIII of the Charter in the field of maintenance of peace and security in the region and encouraged the Parties to co-operate with that organization for the prompt settlement of their dispute. Notwithstanding the difference in the actions taken by the two organs due to the different functions to be played by them respectively, the case demonstrates the importance of maintaining an organic link of co-ordination and co-operation between us the two principal organs of the United Nations, working in the field of preservation of peace and stability. A greater understanding by the Security Council of the potential of the International Court of Justice and a greater degree of such organic co-operation in this field, including an effective use of Article 36, paragraph 3, and Article 94, paragraph 2, of the Charter will, in my humble submission, prove to be extremely useful. This would contribute greatly in enabling the Court to carry out its effective judicial resolution of the disputes in international relations.'

Madam President,
Distinguished Delegates,
Ladies and Gentlemen,

By way of conclusion, I would like to reassure you again that the Court will continue to work vigorously with a view to resolving the disputes put to it with impartiality and judicial rigour in its effort to bring the rule of law at the international level. It is, of course, a truism that States are given free choice of means for the purposes of peaceful settlement of disputes and that disputes often cannot be resolved by a single means but by a combination of means. Judicial settlement of disputes is but one of those means for putting an end to a given conflict. Nevertheless, it provides an important legal framework by which to clarify the rights and the wrongs of different claims of the parties in dispute. It goes without saying that, if the Court is to make a meaningful contribution in this process, the unreserved acceptance by the States involved of the authority of the International Court of Justice as a concrete embodiment of impartial justice is essential. The increasing burden upon the Court resulting from the growing number of cases that have come before it in recent years is a real challenge that the Court has to meet; this is a burden that the Court is more than willing to assume for the good of the world. By contrast, the international community should not lose the opportunity for the timely resolution of disputes by failing to entrust the Court with the adjudication of disputes. It is my hope that an implicit understanding between the Bench and the Security Council, through the development of the principle of mutual complementarity between the Court and the Council will help further to enhance the confidence and effectiveness in our ability to resolve recurring conflicts in this troubled world.

I thank you for your kind attention."

ANNEX 25

President Hisashi Owada's Speech to the Sixth Committee of the General Assembly on 28 October 2011

"Mr. Chairman,
Distinguished Delegates of the Sixth Committee,
Ladies and Gentlemen,

I am pleased to address your Committee today for the third time since my assumption of office as President of the International Court of Justice ('ICJ'). The Court greatly appreciates this opportunity which enables it, through an exchange of views, to strengthen its ties to the legal committee of the General Assembly.

I congratulate H.E. Mr. Hernán Salinas Burgos on his election as Chairman of the Sixth Committee for the Sixty-Sixth Session of the General Assembly.

Rather than reiterating what I stated in the General Assembly concerning the work of the Court over the past year, I would like to take this opportunity to speak about some specific aspects of the Court's work. As you are aware, the International Court of Justice is empowered to adjudicate two kinds of cases: contentious cases and advisory opinions. Over the course of the Court's 65-year history, a total of 151 cases — including both contentious and advisory — have been entered in the Court's General List. What many observers do not consider, however, is that the judgments on the merits in contentious cases, and opinions rendered under its advisory jurisdiction, represent only one part of the Court's work. Aside from these more well-known culminating stages of a case, the Court may take one or several other kinds of decisions. Such proceedings, known as incidental proceedings and elaborated in Articles 73 to 89 of the Rules of Court, include interim protection, preliminary objections, counter-claims, intervention, special reference and discontinuance. It is on this problem of incidental proceedings that I wish to focus today. In light of the relatively large number of such proceedings which the Court has dealt with in recent years, I would like to discuss various aspects of the Court's incidental jurisdiction, especially their relationship to the merits phase of a case. I will focus on the four most substantively complex incidental proceedings: provisional measures, preliminary objections, counter-claims and intervention.

I. Provisional measures

The first type of incidental proceeding I will discuss is provisional measures, which allow the Court, at a preliminary stage of the proceedings, to order either or both parties to preserve the status quo until it has rendered a final decision. Under Article 41, paragraph 1, of the Court's Statute, "The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party." As has been elaborated in the Court's case law, a party requesting that the Court indicate provisional measures must establish: first, that the Court has prima facie jurisdiction in the case; second, a link between the right the protection of which is being sought and the measures requested; and third, an urgent risk of irreparable harm.

When one considers the relationship of incidental proceedings to the merits, it is possible to discern a relationship between each of these criteria and the merits stage of the proceedings. The first criterion, existence of prima facie jurisdiction, clearly relates to the Court's consideration of the merits; indeed, the existence of a basis of jurisdiction and the admissibility of the Application are the very elements necessary in order for the Court to consider the merits in a subsequent phase, so it is logical that such jurisdiction and admissibility must be established, prima facie, for the Court to indicate provisional measures as to the same subject-matter. The second criterion, the link between the right to be protected and the measures requested, relates to the merits because the rights to be protected are in principle those the recognition of which is being asked at the merits stage. This means, it goes without saying, that the rights claimed by the party requesting measures are at least plausible/arguable to warrant such a request. Third, the requirement that the State requesting the indication of provisional measures establish an urgent risk of irreparable harm relates to the merits since it is at the merits phase when the Court will ultimately adjudicate all the claims of the Parties, and any prior consideration of those claims for the purposes of the indication of provisional measures of protection must be justified by an urgent risk that harm could be done to one of the rights claimed by of those parties which would no longer be reparable at the merits stage.

These three criteria are the conditions to ensure that proceedings on provisional measures are sufficiently connected to the merits and that the Court, by its decisions on provisional measures, does not prejudge the merits. The premise of these three conditions, though an obvious point, which is implicit in the Court's consideration of whether or not to grant provisional measures, is the issue of existence *vel non* of the rights to be protected. In its request for provisional measures in the *Passage through the Great Belt* case, for example, Finland had asked the Court to prohibit Denmark, pending a decision on the merits, from continuing with the construction of a bridge over the East Channel of the Great Belt that it alleged would have violated Finland's right of free passage'[1]. Denmark had responded that for provisional measures to be granted it was essential that Finland be able to substantiate the claimed right to a point where a reasonable prospect of success in the main case existed. The Court did not directly address this issue in its Order[2]. Judge Shahabuddeen, in his separate opinion, stated that 'a State requesting interim measures, such as Finland, is required to establish the possible existence of the rights sought to be protected'[3]. He stressed that there is a real difference between deciding that a right definitely exists and finding that 'the requesting State has shown any possibility of its existence'[4].

The plausibility of the rights claimed at the provisional measures stage took on added importance with the Court's affirmation, in its 2001 Judgment in the case concerning *LaGrand (Germany* v. *United States of America)*, that provisional measures under Article 41 of the Statute were binding[5].

The Court, in its 2009 Order on provisional measures in the case concerning *Question relating to the Obligation to Extradite or Prosecute (Belgium* v. *Senegal)*, confirmed this point by stating that its power 'to indicate provisional measures should be exercised only if the Court is satisfied that the rights asserted by a party are at least plausible'[6]. It was repeated in its Order on provisional measures in the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* that 'the Court needs only to decide whether the rights claimed by the Applicant on the merits, and for which it is seeking protection, are plausible'[7].

This question also arose in the recent provisional measures proceedings in the *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear* (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand)*. The Court concluded that, insofar as the rights claimed by Cambodia were based on the Court's Judgment of 15 June 1962 in the case concerning the *Temple of Preah Vihear*, as interpreted by Cambodia, those rights were plausible[8].

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[1] See case concerning *Passage through the Great Belt (Finland* v. *Denmark), Provisional Measures, Order of 29 July 1991, I.C.J. Reports 1991*, pp. 13-14, paras. 6-7.

[2] The Court noted that the existence of a right of free passage was undisputed but that the Parties' disagreement concerned the *extent* of that right — including whether it applied to drill ships and oil rigs — which meant that the right could be protected by provisional measures (although it ultimately rejected the request for provisional measures on other grounds). See *ibid.*, p. 17, para. 22.

[3] See *ibid.*, separate opinion of Judge Shahabuddeen, p. 36.

[4] *Ibid.*, p. 30.

[5] *Judgment, I.C.J. Reports 2001*, pp. 501-506, paras. 98-109.

[6] *Question relating to the Obligation to Extradite or Prosecute (Belgium* v. *Senegal), Provisional Measures, Order of 28 May 2009, I.C.J. Reports 2009*, p. 151, para. 57.

[7] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Provisional Measures, Order of 8 March 2011, I.C.J. Reports 2011 (I)*, p. 19, para. 57.

[8] *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (I)*, p. 646, para. 40.

It bears reiterating that while the Court's determination of the plausible/possible existence of rights at the provisional measures stage has an obvious relationship to the merits, it is not at all determinative of the merits. It does not prejudge the merits, just as the Court's finding at the provisional measures stage that it has prima facie jurisdiction to consider the merits does not prejudge a full-fledged consideration of jurisdiction at the subsequent stage of the proceedings. However, to my mind, what is essential is not this obvious point but the question of what exactly is meant by this expression 'plausible' or the question of what is the standard required for establishing this plausibility. Various expressions have been used in the jurisprudence of the Court — possibility/plausibility/arguability/prima facie case, etc. What I wish to emphasize is that in my personal view this so-called 'plausibility' is not a new requirement added by the Court to the three conditions established in the jurisprudence on the interim measures of protection.

II. Preliminary objections

The second type of incidental proceeding I would like to discuss is preliminary objections. Under Article 79 of the Rules, the respondent may, within three months after the Memorial is filed, submit a written objection to the jurisdiction of the Court or to the admissibility of the Application[9]. Once the respondent has submitted such a preliminary objection, the proceedings on the merits of the case are suspended. When a preliminary objection is raised, the Court stops any consideration of the merits until it has first determined whether it may proceed to entertain the case.

After the Court has heard both parties' views on the preliminary objection, it issues a Judgment in which it upholds the objection, rejects it, or declares that the objection does not possess an 'exclusively preliminary character'[10]. This is a new formula introduced in the revised Rules of Court in 1978 and has its implications.

In the time of the Permanent Court, preliminary objections which were considered to bear on the merits of the case would be officially 'joined' by the Court to the merits of the case, as was the situation, for example in the *Prince von Pless Administration* case. The practice of the International Court of Justice in this regard has evolved over time. Initially, the Court operated much as the Permanent Court in this regard, joining preliminary objections to the merits. Under the 1946 Rules, the Court had a discretionary prerogative to join the preliminary objections to the merits whenever the interests of the good administration of justice required it. Four preliminary objections were joined to the merits under the 1946 Rules: two in the *Right of Passage over Indian Territory* (*Portugal* v. *India*) case, and two more in the *Barcelona Traction* (*Belgium* v. *Spain*) case. In the *Right of Passage* case, the Court decided to join two objections to the merits after reaching the conclusion that it was not possible to pronounce upon them without prejudging the merits. In the *Barcelona Traction* case, the Court joined two preliminary objections to the merits, even though one of them might have been examined at the preliminary stage since its elements were not related to the merits. What is legally significant with this formula is that the Court could join preliminary objections to the merits for any reason consistent with the good administration of justice — it was not required to look into the substance of the objection in order to do so.

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[9] The same article also contemplates the procedure, rarely used in practice, for another party to raise preliminary objections "within the time-limit fixed for the delivery of that party's first pleading".

[10] Article 79, paragraph 9, of the Rules of Court.

This procedure was seen as somewhat inadequate, resulting in delaying proceedings and the potential for a double discussion of the same issues during both the preliminary stage of the proceedings and during the discussion on the merits stage. The Court thus suggested two alternatives, namely 'to revise the Rules so as to exclude the possibility of a joinder to the merits' in the future, which would have required that every objection be addressed at the preliminary stage, or 'to seek a solution which would be more flexible'[11]. This issue was the subject of a long deliberation by several Member States of the United Nations particularly during the discussions lasting from 1963 to 1970 in this Sixth Committee, and in a series of Special Committees. The Court then set up a Committee for the Review of the Methods and Procedures of the Court, which came up with suggestions in the form of the 1972 amendments to the Statute. Those amendments offered a new way forward, not totally excluding the power of the Court to examine a preliminary objection during the merits phase, but limiting the exercise of that power. In particular, the discretion that the Court previously exercised concerning the joining of preliminary objections to the merits was replaced by a new formula presently contained in Article 79, paragraph 9, of the Rules of the Court[12], according to which a preliminary objection can be reserved for the merits stage only when that objection 'does not possess an exclusively preliminary character'.

The Court has identified preliminary objections which it considered were not of an 'exclusively preliminary character' several times since 1972. In the case concerning *Military and Paramilitary Activities in and*

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[11] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 30, para. 40.

[12] Before the amendments and revision that entered into force in February 2001, this provision was established in paragraph 7 of Article 79 of the 1978 Rules. As a consequence of this revision, this paragraph was renumbered paragraph 9.

against Nicaragua (*Nicaragua* v. *United States of America*), the Court determined that an objection advanced by the United States was so intimately related to the substance and merits of the dispute that it did not possess an intrinsically preliminary character, and consequently, that that objection did not constitute an obstacle for the Court to entertain the proceedings initiated by Nicaragua[13]. Similarly, in the case concerning *Land and Maritime Boundary between Cameroon and Nigeria* (*Cameroon* v. *Nigeria*), the Court declared that a preliminary objection raised by Nigeria had to be decided in connection with the merits when it decided that the objection lacked an exclusively preliminary character. That objection concerned the question whether the Court was prevented from carrying out the maritime delimitation requested because the rights and interests of third States were at issue[14]. In the *Lockerbie* cases, the Court found that an objection raised by the United Kingdom and the United States, to the effect that intervening resolutions of the United Nations Security Council had rendered the Libyan claims without object, did not have an exclusively preliminary character and thus fell to be addressed at the merits stage[15].

The decision of the Court reserving judgment on an objection until the merits phase because it does not have an exclusively preliminary character has produced in many cases similar outcomes to the Court's decision under the old Rules to join a preliminary objection to the merits. However, it has one difference: that the reformulation of Article 79, paragraph 9, has narrowed the Court's discretion in this regard. As the Court observed in the case concerning *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua* v. *United States of America*)[16], to decide a case on a purely preliminary question after requiring the parties to expend the time and money necessary to plead the merits fully could invite criticism for waste. Instead, Article 79 in its present form attempts to balance the desire not to prejudge the outcome with concerns for judicial economy.

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[13] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 425, para. 76.

[14] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 325, para. 118.

[15] *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 28, para. 50; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 133, para. 49.

[16] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 410, para. 39.

III. Counter-claims

The third type of incidental proceeding is the counter-claim, which must be raised in the respondent's Counter-Memorial on the merits[17]. A counter-claim is an 'autonomous legal act, the object of which is to submit a new claim to the Court'[18]. At the same time, a counter-claim is 'linked to the principal claim, insofar as, formulated as a 'counter' claim, it reacts to it'[19].

As provided in Article 80, paragraph 1, of the Rules, '[t]he Court may entertain a counter-claim only if it comes within the jurisdiction of the Court and is directly connected with the subject-matter of the claim of the other party'. Counter-claims are intended 'to achieve a procedural economy whilst enabling the Court to have an overview of the respective claims of the parties and to decide them more consistently'; at the same time, such a means should not be used by the respondent 'to impose on the applicant any claim it chooses, at the risk of infringing the Applicant's rights and of compromising the proper administration of justice'[20]. It is for these reasons that Article 80 of the Rules of the Court refines the evidence of jurisdiction and connection to the main claim to be met. The counter-claim must come within the Court's jurisdiction on its own standing; it may not be heard simply on the basis of the Court's jurisdiction over the main claim[21]. That being said, parties have at times simply agreed to extend the Court's jurisdiction to a counter-claim through the application of *forum prorogatum*.

In determining whether a counter-claim is directly connected with the subject-matter of the main claim, the Court exercises its sole discretion, taking account of the particular aspects of each case. In the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia)*, the Court explained that, as a general rule, a degree of connection between the claims must be assessed both in fact and in law[22]. Thus, in that case the Court found Yugoslavia's counter-claims to be admissible as such because the facts on which the counter-claims rested had allegedly occurred on the same territory and during the same time period as the facts underpinning the main claim and Yugoslavia had stated its intention to rely on certain identical facts both in opposing Bosnia and Herzegovina's claim and in supporting its own claims, and because both Parties' claims pursued the same legal aim, namely the establishment of legal responsibility for violations of the Genocide Convention[33]. In the *Oil Platforms (Islamic Republic of Iran v. United States of America)* case, the Court found the United States' counter-claim to be admissible as such under similar reasoning, emphasizing that the Parties' claims and counter-claims rested on facts of the same nature, since the United States had indicated that it intended 'to rely on the same facts and circumstances in order both to refute the allegations of Iran and to obtain judgment against that State'[34]. The Court also observed that both the claim and counter-claim concerned violations of the same treaty[35].

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[17] Article 80, paragraph 2, of the Rules of Court.

[18] *Jurisdictional Immunities of the State (Germany* v. *Italy), Counter-Claim, Order of 6 July 2010, I.C.J. Reports 2010 (I)*, p. 6, para. 13.

[19] *Ibid.*

[20] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia), Counter-Claims, Order of 17 December 1997, I.C.J. Reports 1997*, p. 257, paras. 30-31.

[21] See Shabtai Rosenne, *The Law and Practice of the International Court, 1920-2005* (4th ed.), p. 1234.

[22] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia), Counter-Claims, Order of 17 December 1997, I.C.J. Reports 1997*, p. 258, para. 33.

In analysing whether a factual connection exists between a counter-claim and the main claim, the Court inquires whether the facts underpinning both claims are part of the same so-called 'factual complex'[36]. That concept, while capturing the essence of the analysis, should not be interpreted to suggest that the analysis is formulaic; as I stated before, whether a counter-claim is directly connected with the subject-matter of the main claim depends on the particular aspects of each individual case. The Court's jurisprudence shows the concept of a 'factual complex'. As one commentator has observed, such a complex comprises many factors: the title of the jurisdiction itself; the time span of events to which the counter-claim relates as compared with the time span of events of the original claim; the territorial aspect; the instruments invoked in the counter-claim in comparison with those invoked in the original claim; and the objective of restoring legality in the relations of the litigant States[37].

In the case concerning *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, the Court found Italy's counter-claim, which was submitted on 23 December 2009, to be inadmissible as such. In its Order of 6 July 2010, the Court found that it lacked jurisdiction over the counter-claim[38]. The Court concluded that the dispute which Italy sought to bring before the Court — whether Germany had violated an obligation to provide Italian

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[33] See note 23 *supra*, p. 258, paras. 34-35.

[34] *Oil Platforms (Islamic Republic of Iran v. United States of America), Counter-Claim, Order of 10 March 1998, I.C.J. Reports 1998*, p. 205, para. 38.

[35] *Ibid.*

[36] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Counter-Claims, Order of 17 December 1997, I.C.J. Reports 1997*, p. 258, para. 34; *Oil Platforms (Islamic Republic of Iran v. United States of America), Counter-Claim, Order of 10 March 1998, I.C.J. Reports 1998*, p. 205, para. 38.

[37] Shabtai Rosenne, *The Law and Practice of the International Court, 1920-2005* (4th ed.), p. 1235.

[38] *Jurisdictional Immunities of the State (Germany v. Italy), Counter-Claim, Order of 6 July 2010, I.C.J. Reports 2010 (I)*, p. 321, para. 32.

World War II victims with effective reparation — related to facts and situations existing before the entry into force between the Parties in 1961, of the European Convention for the Peaceful Settlement of Disputes of 29 April 1957. That Convention, however, which served as the alleged basis of the Court's jurisdiction over the counter-claim, as well as the basis of the claim by Germany, expressly provided that its provisions did not apply to disputes relating to facts or situations prior to the Convention's entry into force.

I am not going to dwell on the issue of how the Court might analyse the counter-claim's connection with the subject-matter of the main claim. It is however useful to point out that, in this case, unlike in the *Application of the Genocide Convention* and the *Oil Platforms* cases, both the factual and legal aspects of the counter-claim differed from the factual and legal aspects of the main claim. This difference led the Court to examine carefully the jurisdictional bases of the main claim and the counter-claim in light of the legal nature of the claim. With the counter-claim in the *Germany* v. *Italy* case, Germany in its Application alleged that Italy, in allowing civil claims to be brought in its courts against Germany for violations of international humanitarian law committed by the Nazi régime, had violated Germany's jurisdictional immunity under international law, while Italy in its counter-claim submitted that Germany had violated an international obligation to provide effective reparation to Italian victims of crimes committed by the Nazi régime.

IV. Intervention

The fourth type of incidental proceeding is intervention by a State in an existing case between other States. Intervention allows the intervening State to present to the Court its observations relating to a particular aspect of the case[39]. Under the Statute two types of intervention are envisaged. First, under Article 62 of the Statute, '[s]hould a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene'. Second, under Article 63 of the Statute, when a case concerns the construction of a convention, the Registrar notifies all States parties to that convention, who then have a right to intervene in the proceedings. In view of the fact that the Court has recently considered three different requests for permission to intervene under Article 62, I will be focusing my comments on this form of intervention.

Unlike intervention under Article 63 of the Statute, intervention under Article 62 of the Statute is not as of right. Instead, a State which considers that it has an interest of a legal nature in a case may only request to be permitted to intervene in that case. It is for the Court to decide whether or not to grant this request. To that end, the Court will have to examine whether the State applying to intervene has an interest of a legal nature sufficiently connected to the subject-matter of a case to justify the inclusion of that State in the case as an intervening State.

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[39] See Articles 85 and 86 of the Rules of Court.

The requirement of establishing 'an interest of a legal nature which may be affected by the decision in the case' is a difficult one for States to satisfy in practice. Permission to intervene has been granted only in three cases in the whole history of the Court. First, Nicaragua was permitted to intervene on one question before the Court in the case concerning *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*. Second, Equatorial Guinea was authorized by the Court to intervene in the case concerning *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*. Finally, the Court recently granted Greece's Application for permission to intervene in the proceedings now before the Court in the case concerning *Jurisdictional Immunities of the State (Germany v. Italy; Greece intervening)*. With respect to all other Applications for intervention, the Court has concluded that the State requesting permission to intervene had not established that it had 'an interest of a legal nature which may be affected by the decision in the case'. The basic difficulty came from the fact that 'the decision of the Court has no binding force except between the Parties and in respect of that particular case' (Article 59 of the Statute). By virtue of this provision, the decision of the Court remains *res inter alios acta* to the States wishing to intervene. While it was related to 'an interest of a legal nature' and not rights of a third party, it is difficult to establish that the decisions of the Court 'may affect such interest of a legal nature'. Moreover, in many of the cases of maritime delimitation, in which States have sought to intervene, the Court has always taken pains to make a consistent position that it will avoid delimiting 'any area where third party interests could become involved'[illegible]. The Court has always taken care to ensure that it is not going to affect the interest of a third Party. This practice of the Court will have the effect of making it more difficult for the party wishing to intervene the interests of a legal nature. It is for this reason that with the exception of the case of Equatorial Guinea, which the Court authorized to intervene, the two other successful cases of intervention related to situations other than that of maritime delimitation. That is to say, the intervention by Nicaragua which was permitted only in relation with the argument concerning condominium and the intervention by Greece in the *Germany v. Italy* case in relation with the Greek Judgments involved.

The fact that the Court has seldom granted requests to intervene under Article 62 reflects the precision with which it handles disputes

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[illegible] *Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009*, p. 100, para. 112.

brought before it. The possibility to intervene under Article 62 of the Statute and Article 81 of the Rules of Court is not an open invitation to expand an existing dispute between two States into one including numerous States. Rather, the possibility of a third State participating as an intervener is only made available when, as already indicated, that latter State can establish that it has an interest of a legal nature which may be affected by the subject-matter of that case. The strictness of this criterion can be illustrated by reference to Nicaragua's requested intervention in the *El Salvador/Honduras* case, since the Chamber of the Court in that case granted Nicaragua's request as to part of the case but denied the request with respect to another aspect of the case. First, with respect to the question before the Court concerning the legal régime applicable in the Gulf of Fonseca, El Salvador was claiming before the Court that a condominium existed. Nicaragua in its Application for permission to intervene observed that it plainly had rights in the Gulf of Fonseca, the existence of which was undisputed, and contended that the condominium, if declared applicable, would necessarily affect these rights, this being inherent in the very definition of a condominium. On the other hand, the Chamber concluded that Nicaragua had no interest of a legal nature in the maritime delimitation to be carried out in the case.

Basically for these reasons, the Court rejected recently the expansive view presented in the Application of Honduras to intervene in the case *Nicaragua v. Colombia*[11]. Honduras had argued that a State has a right to intervene under Article 62 when that State considers that it has an interest of a legal nature. The Court rejected this argument, stating that '[i]t is not sufficient for that State to consider that it has an interest of a legal nature which may be affected by the Court's decision'[12]. It emphasized that 'Article 62, paragraph 2, clearly recognizes the Court's prerogative to decide on a request for permission to intervene, on the basis of the elements which are submitted to it'[13], which it is the function of the Court to examine.

Even when a State is permitted to intervene under Article 62 of the Statute, that State does not automatically become a party to the case as such. Intervention is a procedure that is incidental to an existing case. It is not a way for a State to bring a new dispute before the Court. As the Court stated, intervention 'is not intended to enable a third State to tack on a new case, to become a new party, and so have its own claims adjudicated by the Court'[14]. The Court emphasized that 'the incidental jurisdiction conferred by Article 62 of the Statute is circumscribed by the general principle of consensual jurisdiction over particular disputes'[illegible] and concluded: '[i]t is therefore clear that a State which is allowed to intervene in a case, does not, by reason only of being an intervener, become also a party to the case'[illegible]. The Court however added that '[i]t is true, conversely, that, provided that there be the necessary consent by the parties to the case, the intervener is not prevented by reason of that status from itself becoming a party to the case'[illegible].

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[11] *Territorial and Maritime Dispute (Nicaragua v. Colombia), Application for Permission to Intervene, Judgment, I.C.J. Reports 2011 (II)*, pp. 433-434, para. 35.

[12] *Ibid.*

[13] *Ibid.*

[14] *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application for Permission to Intervene, Judgment, I.C.J. Reports 1990*, pp. 133-134, para. 97.

On the other hand, if a State were permitted to intervene as a party, it would in essence be admitted into the merits phase of the case on an equal footing as the existing parties. It is thus another area where the boundary between incidental proceedings and merits is most obvious. However, until recently, the Court had never received an Application from a State for permission to intervene as a party. This situation changed when, in the case concerning *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Honduras applied to intervene as a party and, only alternatively, as a non-party. Although the Court in that case rejected Honduras's Application for permission to intervene both as a party and as a non-party[illegible], the Court affirmed that the distinction between intervention as a party and intervention as a non-party is of significant legal effect. The Court observed that:

> 'If it is permitted by the Court to become a party to the proceedings, the intervening State may ask for rights of its own to be recognized by the Court in its future decision, which would be binding for that State in respect of those aspects for which intervention was granted, pursuant to Article 59 of the Statute. *A contrario*, as the Chamber of the Court formed to deal with the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)* has pointed out, a State permitted to intervene in the proceedings as a non-party 'does not acquire the rights, or become subject to the obligations, which attach to the status of a party, under the Statute and Rules of Court, or the general principles of procedural law'.'[illegible]

If a State is permitted to intervene as a party, the intervention is transformed into something very different from the case of a State wishing to intervene as a non-party under Article 62 of the Statute. It can be said that if a State were to intervene as a party, that State participates in the merits phase of the proceedings as a party to the case.

[illegible] See note 34 *supra*, p. 134, para. 99.

[illegible] *Ibid.*

[illegible] *Ibid.*, pp. 134-135, para. 99.

[illegible] *Territorial and Maritime Dispute (Nicaragua v. Colombia), Application for Permission to Intervene, Judgment, I.C.J. Reports 2011 (II)*, p. 444, para. 75.

[illegible] *Ibid.*, p. 432, para. 29.

and it is subsequently bound by Article 59 of the Court's Statute. To this day, no State has been permitted to intervene as a party. What we have been witnessing is non-party intervention. In a typical non-party intervention under Article 62, the intervening State's connection to the merits could be considered quite tangential: it is not bound by the Judgment under Article 59. It is participating in the proceedings, but it cannot be considered to have the same stake in those proceedings as does a party to the case. Nevertheless, intervention under Article 62 has a central role to play. If it can establish that it has a specific 'interest of a legal nature which may be affected by the case', the State intervening as non-party is able to make that interest fully known to the Court through intervention proceedings under Article 62.

*

Mr. Chairman,
Distinguished Delegates,

As I have said at the outset, incidental proceedings may not be the central point of the Court's work, but they raise interesting aspects of the activities of the Court. With an understanding of these proceedings one is able more fully to appreciate the Court's work. The Court's jurisprudence in each area of these incidental proceedings is continuing to evolve, as more case law is being accumulated in these comparatively new areas relating to the procedural law of the Court.

Thank you for this opportunity to address you today on this important aspect of the Court's work. I wish you a productive session of the Sixth Committee, and it is my hope and sincere belief that our two institutions will continue to benefit from each other's work on international legal issues."

ANNEX 26 (A)

History (1996-2011) of the United Nations General Assembly Resolutions on *Legality of the Threat or Use of Nuclear Weapons*

By a note dated 15 October 1996 the Secretary-General of the United Nations transmitted the text of the Advisory Opinion given by the Court on 8 July 1996 to the General Assembly (United Nations doc. A/51/218).

At the 79th plenary meeting of its fifty-first session, held on 10 December 1996, the General Assembly adopted resolution 51/45M, at the 67th plenary meeting of its fifty-second session, held on 9 December 1997, resolution 52/38 O, at the 79th plenary meeting of its fifty-third session, held on 4 December 1998, resolution 53/77 W, at the 69th plenary meeting of its fifty-fourth session, held on 1 December 1999, resolution 54/54 Q, at the 69th plenary meeting of its fifty-fifth session, held on 20 November 2000, resolution 55/33 X, at the 68th plenary meeting of its fifty-sixth session, held on 29 November 2001, resolution 56/24 S, at the 57th plenary meeting of its fifty-seventh session, held on 22 November 2002, resolution 57/85, at the 71st plenary meeting of its fifty-eighth session, held on 8 December 2003, resolution 58/46, at the 66th plenary meeting of its fifty-ninth session, held on 3 December 2004, resolution 59/83, at the 61st plenary meeting of its sixtieth session, held on 8 December 2005, resolution 60/76, at the 67th plenary meeting of its sixty-first session, held on 6 December 2006, resolution 61/83, at the 61st plenary meeting of its sixty-second session, held on 5 December 2007, resolution 63/49, at the 61st plenary meeting of its sixty-third session, held on 2 December 2008, resolution 64/55, at the 55th plenary meeting of its sixty-fourth session, held on 2 December 2009 and at the 60th plenary meeting of its sixty-fifth session, held on 8 December 2010, the General Assembly adopted resolution 65/76, the full texts of which are reproduced in *I.C.J. Yearbook 1996-1997*, pp. 205-206, *I.C.J. Yearbook 1997-1998*, pp. 286-288, *I.C.J. Yearbook 1998-1999*, pp. 313-315, *I.C.J. Yearbook 1999-2000*, pp. 278-280, *I.C.J. Yearbook 2000-2001*, pp. 317-319, *I.C.J. Yearbook 2001-2002*, pp. 306-307, *I.C.J. Yearbook 2002-2003*, pp. 325-327, *I.C.J. Yearbook 2003-2004*, pp. 343-345, *I.C.J. Yearbook 2004-2005*, pp. 278-280, *I.C.J. Yearbook 2005-2006*, pp. 278-279, *I.C.J. Yearbook 2006-2007*, pp. 297-299, *I.C.J. Yearbook 2007-2008*, pp. 346-347, *I.C.J. Yearbook 2008-2009*, pp. 368-371, *I.C.J. Yearbook 2009-2010*, pp. 413-415 and *I.C.J. Yearbook 2010-2011*, pp. 310-312, respectively.

ANNEX 26 (B)

FULL TEXT OF GENERAL ASSEMBLY RESOLUTION A/RES/66/46 OF 2 DECEMBER 2011 ON THE ADVISORY OPINION OF THE INTERNATIONAL COURT OF JUSTICE ON THE *LEGALITY OF THE THREAT OR USE OF NUCLEA* *WEAPONS*

"*The General Assembly*,

Recalling its resolutions 49/75 K of 15 December 1994, 51/45 M
10 December 1996, 52/38 O of 9 December 1997, 53/77 W of 4 De
ember 1998, 54/54 Q of 1 December 1999, 55/33 X of 20 Novemb
2000, 56/24 S of 29 November 2001, 57/85 of 22 November 200
58/46 of 8 December 2003, 59/83 of 3 December 2004, 60/76 of 8 De
ember 2005, 61/83 of 6 December 2006, 62/39 of 5 December 200
63/49 of 2 December 2008, 64/55 of 2 December 2009 and 67/76
8 December 2010,

Convinced that the continuing existence of nuclear weapons pos
a threat to humanity and all life on Earth, and recognizing that t
only defence against a nuclear catastrophe is the total elimination
nuclear weapons and the certainty that they will never be produc
again,

Reaffirming the commitment of the international community to t
realization of the goal of a nuclear-weapon-free world through t
total elimination of nuclear weapons,

Mindful of the solemn obligations of States parties, undertak
in Article VI of the Treaty on the Non-Proliferation of Nucle
Weapons, particularly to pursue negotiations in good faith
effective measures relating to cessation of the nuclear arms race at
early date and to nuclear disarmament,

Recalling the principles and objectives for nuclear non-proliferati
and disarmament adopted at the 1995 Review and Extensi
Conference of the Parties to the Treaty on the Non-Proliferati
of Nuclear Weapons, the unequivocal commitment of nucle
weapon States to accomplish the total elimination of their nucle
arsenals leading to nuclear disarmament, agreed at the 2000 Revi
Conference of the Parties to the Treaty on the Non-Proliferation
Nuclear Weapons, and the action points agreed at the 2010 Revi
Conference of the Parties to the Treaty on the Non-Proliferation
Nuclear Weapons as part of the conclusions and recommendatio
for follow-on actions on nuclear disarmament,

Sharing the deep concern at the catastrophic humanitari
consequences of any use of nuclear weapons, and in this cont

reaffirming the need for all States at all times to comply with applicable international law, including international humanitarian law,

Calling upon all nuclear-weapon States to undertake concrete disarmament efforts, and stressing that all States need to make special efforts to achieve and maintain a world without nuclear weapons,

Noting the five-point proposal for nuclear disarmament of the Secretary-General, in which he proposes, *inter alia*, the consideration of negotiations on a nuclear weapons convention or agreement on a framework of separate mutually reinforcing instruments, backed by a strong system of verification,

Recalling the adoption of the Comprehensive Nuclear-Test-Ban Treaty in its resolution 50/245 of 10 September 1996, and expressing its satisfaction at the increasing number of States that have signed and ratified the Treaty,

Recognizing with satisfaction that the Antarctic Treaty, the treaties of Tlatelolco, Rarotonga, Bangkok and Pelindaba and the Treaty on a Nuclear-Weapon-Free Zone in Central Asia, as well as Mongolia's nuclear-weapon-free status, are gradually freeing the entire southern hemisphere and adjacent areas covered by those treaties from nuclear weapons,

Recognizing the need for a multilaterally negotiated and legally binding instrument to assure non-nuclear-weapon States against the threat or use of nuclear weapons pending the total elimination of nuclear weapons,

Reaffirming the central role of the Conference on Disarmament as the sole multilateral disarmament negotiating forum,

Emphasizing the need for the Conference on Disarmament to commence negotiations on a phased programme for the complete elimination of nuclear weapons with a specified framework of time,

Stressing the urgent need for the nuclear-weapon States to accelerate concrete progress on the thirteen practical steps to implement Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons leading to nuclear disarmament, contained in the Final Document of the 2000 Review Conference,

Taking note of the Model Nuclear Weapons Convention that was submitted to the Secretary-General by Costa Rica and Malaysia in 2007 and circulated by the Secretary-General,

Desiring to achieve the objective of a legally binding prohibition of the development, production, testing, deployment, stockpiling, threat or use of nuclear weapons and their destruction under effective international control,

Recalling the Advisory Opinion of the International C
Justice on the *Legality of the Threat or Use of Nuclear W*
issued on 8 July 1996,

1. *Underlines once again* the unanimous conclusion
International Court of Justice that there exists an ol
to pursue in good faith and bring to a conclusion neg
leading to nuclear disarmament in all its aspects under s
effective international control;

2. *Calls once again upon* all States immediately to fu
obligation by commencing multilateral negotiations le
an early conclusion of a nuclear weapons convention pr
the development, production, testing, deployment, sto
transfer, threat or use of nuclear weapons and providing
elimination;

3. *Requests* all States to inform the Secretary-General of th
and measures they have taken with respect to the implem
of the present resolution and nuclear disarmament, and
the Secretary-General to apprise the General Assembl
information at its sixty-seventh session;

4. *Decides* to include in the provisional agenda of its sixt
session the item entitled 'Follow-up to the Advisory O
the International Court of Justice on the *Legality of the*
Use of Nuclear Weapons'." [Footnotes not reproduced.

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